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HOUSE BILL 161

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Bill B. O'Neill

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO GUARDIANSHIP; AMENDING SECTIONS OF THE NMSA 1978  
REGARDING RESPONSIBILITIES OF A GUARDIAN OF A PROTECTED PERSON.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-7A-1 NMSA 1978 (being Laws 1995,  
Chapter 182, Section 1, as amended) is amended to read:

"24-7A-1. DEFINITIONS.--As used in the Uniform Health-  
Care Decisions Act:

A. "advance health-care directive" means an  
individual instruction or a power of attorney for health care  
made, in either case, while the individual has capacity;

B. "agent" means an individual designated in a  
power of attorney for health care to make a health-care  
decision for the individual granting the power;

C. "capacity" means an individual's ability to

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1 understand and appreciate the nature and consequences of  
2 proposed health care, including its significant benefits, risks  
3 and alternatives to proposed health care and to make and  
4 communicate an informed health-care decision. A determination  
5 of lack of capacity shall be made only according to the  
6 provisions of Section 24-7A-11 NMSA 1978;

7 D. "emancipated minor" means [~~a person~~] an  
8 individual between the ages of sixteen and eighteen who has  
9 been married, who is on active duty in the armed forces or who  
10 has been declared by court order to be emancipated;

11 E. "guardian" means a judicially appointed guardian  
12 or conservator having authority to make a health-care decision  
13 for an individual;

14 F. "health care" means any care, treatment, service  
15 or procedure to maintain, diagnose or otherwise affect an  
16 individual's physical or mental condition;

17 G. "health-care decision" means a decision made by  
18 an individual or the individual's agent, guardian or surrogate,  
19 regarding the individual's health care, including:

20 (1) selection and discharge of health-care  
21 providers and institutions;

22 (2) approval or disapproval of diagnostic  
23 tests, surgical procedures, programs of medication and orders  
24 not to resuscitate;

25 (3) directions relating to life-sustaining

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1 treatment, including withholding or withdrawing life-sustaining  
2 treatment and the termination of life support; and

3 (4) directions to provide, withhold or  
4 withdraw artificial nutrition and hydration and all other forms  
5 of health care;

6 H. "health-care institution" means an institution,  
7 facility or agency licensed, certified or otherwise authorized  
8 or permitted by law to provide health care in the ordinary  
9 course of business;

10 I. "health-care provider" means an individual  
11 licensed, certified or otherwise authorized or permitted by law  
12 to provide health care in the ordinary course of business or  
13 practice of a profession;

14 J. "individual instruction" means an individual's  
15 direction concerning a health-care decision for the individual  
16 made while the individual has capacity;

17 K. "life-sustaining treatment" means any medical  
18 treatment or procedure without which the individual is likely  
19 to die within a relatively short time, as determined to a  
20 reasonable degree of medical certainty by the primary  
21 physician;

22 L. "person" means an individual, corporation,  
23 business trust, estate, trust, partnership, association, joint  
24 venture, government, governmental subdivision, agency or  
25 instrumentality or any other legal or commercial entity;

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1 M. "physician" means an individual authorized to  
2 practice medicine or osteopathy;

3 N. "power of attorney for health care" means the  
4 designation of an agent to make health-care decisions for the  
5 individual granting the power, made while the individual has  
6 capacity;

7 O. "primary physician" means a physician designated  
8 by an individual or the individual's agent, guardian or  
9 surrogate to have primary responsibility for the individual's  
10 health care or, in the absence of a designation or if the  
11 designated physician is not reasonably available, a physician  
12 who undertakes the responsibility;

13 P. "principal" means an adult or emancipated minor  
14 who, while having capacity, has made a power of attorney for  
15 health care by which ~~[he]~~ the adult or emancipated minor  
16 delegates ~~[his]~~ the right to make health-care decisions for  
17 ~~[himself]~~ the adult or emancipated minor to an agent;

18 Q. "protected person" means an adult or emancipated  
19 minor for whom a guardian has been appointed;

20 ~~[Q-]~~ R. "qualified health-care professional" means  
21 a health-care provider who is a physician, physician assistant,  
22 nurse practitioner, nurse, psychologist or social worker;

23 ~~[R-]~~ S. "reasonably available" means readily able  
24 to be contacted without undue effort and willing and able to  
25 act in a timely manner considering the urgency of the patient's

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1 health-care needs;

2 [S-] T. "state" means a state of the United States,  
3 the District of Columbia, the commonwealth of Puerto Rico or a  
4 territory or insular possession subject to the jurisdiction of  
5 the United States;

6 [F-] U. "supervising health-care provider" means  
7 the primary physician or, if there is no primary physician or  
8 the primary physician is not reasonably available, the health-  
9 care provider who has undertaken primary responsibility for an  
10 individual's health care; and

11 [U-] V. "surrogate" means an individual, other than  
12 a patient's agent or guardian, authorized under the Uniform  
13 Health-Care Decisions Act to make a health-care decision for  
14 the patient [and

15 V. ~~"ward" means an adult or emancipated minor for~~  
16 ~~whom a guardian has been appointed]."~~

17 Section 2. Section 24-7A-6 NMSA 1978 (being Laws 1995,  
18 Chapter 182, Section 6) is amended to read:

19 "24-7A-6. DECISIONS BY GUARDIAN.--

20 A. A guardian shall comply with the [ward's]  
21 protected person's individual instructions made while the  
22 protected person had capacity and [may] shall not [revoke]  
23 disregard the [ward's] protected person's preferences contained  
24 in an advance health-care directive unless the appointing court  
25 expressly so authorizes after notice to the agent, if any, and

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1 the ~~[ward]~~ protected person. The court may disregard such  
2 preferences if it finds by clear and convincing evidence that  
3 the preferences do not accurately reflect the free choice of  
4 the protected person at the time of making the individual  
5 instructions or that the protected person revoked the  
6 individual instructions while the protected person had capacity  
7 pursuant to Subsection B of Section 24-7A-3 NMSA 1978. This  
8 provision does not affect the court's ability to grant relief  
9 pursuant to a petition as provided in Section 24-7A-14 NMSA  
10 1978.

11 B. A health-care decision of an agent appointed by  
12 ~~[an individual]~~ a person having capacity takes precedence over  
13 that of a guardian, unless the appointing court expressly  
14 directs otherwise after notice to the agent and the ~~[ward]~~  
15 protected person.

16 C. Subject to the provisions of Subsections A and B  
17 of this section, a health-care decision made by a guardian for  
18 the ~~[ward]~~ protected person is effective without judicial  
19 approval, if the appointing court has expressly authorized the  
20 guardian to make health-care decisions for the ~~[ward]~~ protected  
21 person, in accordance with the provisions of Section 45-5-312  
22 NMSA 1978, after notice to the ~~[ward]~~ protected person and any  
23 agent."

24 Section 3. Section 24-7A-17 NMSA 1978 (being Laws 1995,  
25 Chapter 182, Section 17) is amended to read:

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1 "24-7A-17. SHORT TITLE.--~~[Sections 1 through 17 of this~~  
2 ~~act]~~ Chapter 24, Article 7A NMSA 1978 may be cited as the  
3 "Uniform Health-Care Decisions Act"."

4 Section 4. Section 24-7B-1 NMSA 1978 (being Laws 2006,  
5 Chapter 7, Section 1) is amended to read:

6 "24-7B-1. SHORT TITLE.--~~[This act]~~ Chapter 24, Article 7B  
7 NMSA 1978 may be cited as the "Mental Health Care Treatment  
8 Decisions Act"."

9 Section 5. Section 24-7B-3 NMSA 1978 (being Laws 2006,  
10 Chapter 7, Section 3) is amended to read:

11 "24-7B-3. DEFINITIONS.--As used in the Mental Health Care  
12 Treatment Decisions Act:

13 A. "advance directive for mental health treatment"  
14 means an individual instruction or power of attorney for mental  
15 health treatment made pursuant to the Mental Health Care  
16 Treatment Decisions Act;

17 B. "agent" means an individual designated in a  
18 power of attorney for mental health treatment to make a mental  
19 health treatment decision for the individual granting the  
20 power;

21 C. "capacity" means an individual's ability to  
22 understand and appreciate the nature and consequences of  
23 proposed mental health treatment, including significant  
24 benefits and risks and alternatives to the proposed mental  
25 health treatment, and to make and communicate an informed

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1 mental health treatment decision. A written determination or  
2 certification of lack of capacity shall be made only according  
3 to the provisions of the Mental Health Care Treatment Decisions  
4 Act;

5 D. "emancipated minor" means [~~a person~~] an  
6 individual between the ages of sixteen and eighteen who has  
7 been married, who is on active duty in the armed forces or who  
8 has been declared by court order to be emancipated;

9 E. "guardian" means a judicially appointed guardian  
10 having authority to make a mental health decision for an  
11 individual;

12 F. "individual instruction" means an individual's  
13 direction concerning a mental health treatment decision for the  
14 individual, made while the individual has capacity, which is to  
15 be implemented when the individual has been determined to lack  
16 capacity;

17 G. "mental health treatment" means services  
18 provided for the prevention of, amelioration of symptoms of or  
19 recovery from mental illness or emotional disturbance,  
20 including electroconvulsive treatment, treatment with  
21 medication, counseling, rehabilitation services or evaluation  
22 for admission to a facility for care or treatment of persons  
23 with mental illness, if required;

24 H. "mental health treatment decision" means a  
25 decision made by an individual or the individual's agent or

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1 guardian regarding the individual's mental health treatment,  
2 including:

3 (1) selection and discharge of health care or  
4 mental health treatment providers and institutions;

5 (2) approval or disapproval of diagnostic  
6 tests, programs of medication and mental health treatment; and

7 (3) directions relating to mental health  
8 treatment;

9 I. "mental health treatment facility" means an  
10 institution, facility or agency licensed, certified or  
11 otherwise authorized or permitted by law to provide mental  
12 health treatment in the ordinary course of business;

13 J. "mental health treatment provider" or "health  
14 care provider" means an individual licensed, certified or  
15 otherwise authorized or permitted by law to provide diagnosis  
16 or mental health treatment in the ordinary course of business  
17 or practice of a profession;

18 K. "mental illness" means a substantial disorder of  
19 a person's emotional process, thoughts or cognition that  
20 grossly impairs judgment, behavior or capacity to recognize  
21 reality, but "mental illness" does not mean a developmental  
22 disability;

23 L. "power of attorney for mental health treatment"  
24 means the designation of an agent to make mental health  
25 treatment decisions for the individual granting the power, made

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1 while the individual has capacity;

2 M. "primary health care professional" means a  
3 qualified health care professional designated by an individual  
4 or the individual's agent or guardian to have primary  
5 responsibility for the individual's health care or, in the  
6 absence of a designation or if the designated qualified health  
7 care professional is not reasonably available, a qualified  
8 health care professional who undertakes that responsibility;

9 N. "principal" means an adult or emancipated minor  
10 who, while having capacity, has made a power of attorney for  
11 mental health treatment by which the adult or emancipated minor  
12 delegates the right to make mental health treatment decisions  
13 for that adult or emancipated minor to an agent;

14 O. "protected person" means an adult or emancipated  
15 minor for whom a guardian has been appointed;

16 [~~Q.~~] P. "qualified health care professional" means  
17 a licensed health care provider who is a physician, physician  
18 assistant, nurse practitioner, nurse or psychologist;

19 [~~R.~~] Q. "reasonably available" means able to be  
20 contacted without undue effort and willing and able to act in a  
21 timely manner considering the urgency of the patient's mental  
22 health treatment needs; and

23 [~~S.~~] R. "supervising health care provider" means  
24 the primary qualified health care professional or, if the  
25 primary qualified health care professional is not reasonably

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1 available, the health care provider who has undertaken primary  
2 responsibility for an individual's health care [~~and~~

3 ~~R. "ward" means an adult or emancipated minor for~~  
4 ~~whom a guardian has been appointed]."~~

5 Section 6. Section 24-7B-8 NMSA 1978 (being Laws 2006,  
6 Chapter 7, Section 8) is amended to read:

7 "24-7B-8. DECISIONS BY GUARDIAN.--

8 A. A guardian shall comply with the [~~ward's~~]  
9 protected person's individual instructions made while the  
10 protected person had capacity and may not [~~revoke~~] disregard  
11 the [~~ward's~~] protected person's preferences contained in an  
12 advance directive for mental health treatment unless the  
13 appointing court expressly so authorizes after notice to the  
14 agent, if any, and the [~~ward~~] protected person. The court may  
15 disregard such preferences if it finds by clear and convincing  
16 evidence that the preferences do not accurately reflect the  
17 free choice of the protected person at the time of making the  
18 individual instructions or that the protected person revoked  
19 the individual instructions while the protected person had  
20 capacity pursuant to Subsection B of Section 24-7A-3 NMSA 1978.

21 B. A mental health treatment decision of an agent  
22 appointed by an individual having capacity takes precedence  
23 over that of a guardian, unless the appointing court expressly  
24 directs otherwise after notice to the agent and the [~~ward~~]  
25 protected person.

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1           C. Subject to the provisions of Subsections A and B  
2 of this section, a mental health treatment decision made by a  
3 guardian for the ~~[ward]~~ protected person is effective without  
4 judicial approval, if the appointing court has expressly  
5 authorized the guardian to make mental health treatment  
6 decisions for the ~~[ward]~~ protected person, in accordance with  
7 the provisions of Sections 43-1-15 or 45-5-312 NMSA 1978, after  
8 notice to the ~~[ward]~~ protected person and any agent."

9           Section 7. Section 28-16B-1 NMSA 1978 (being Laws 2003,  
10 Chapter 280, Section 1) is amended to read:

11           "28-16B-1. SHORT TITLE.--~~[This act]~~ Chapter 28, Article  
12 16B NMSA 1978 may be cited as the "Office of Guardianship  
13 Act"."

14           Section 8. Section 28-16B-3 NMSA 1978 (being Laws 2003,  
15 Chapter 280, Section 3) is amended to read:

16           "28-16B-3. OFFICE--POWERS AND DUTIES.--

17           A. The office of guardianship may:

18                   (1) promulgate rules in accordance with the  
19 State Rules Act to carry out the provisions of the Office of  
20 Guardianship Act; and

21                   (2) enter into agreements with other state or  
22 federal agencies to provide guardianship services and to  
23 provide or receive payment for such services.

24           B. The office of guardianship shall:

25                   (1) contract for the provision of probate

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1 guardianship services to income-eligible incapacitated persons,  
2 including temporary guardianship as provided in Section  
3 45-5-310 NMSA 1978;

4 (2) provide for the recruitment and training  
5 of persons interested and willing to serve as mental health  
6 treatment guardians;

7 (3) provide training and information to  
8 interested persons on the duties and responsibilities of  
9 guardians, including alternatives to guardianship and mental  
10 health treatment guardianship;

11 (4) establish procedures for the investigation  
12 and resolution of complaints against contractors;

13 (5) contract for attorneys to petition the  
14 district court for guardianship of persons believed to be  
15 incapacitated or to seek amendment or termination of existing  
16 guardianship orders if the needs or situation of [~~wards~~]

17 protected persons have changed; provided that the selection of  
18 persons to be served under such contracts shall be made by the  
19 office based on selection criteria established by rule; and

20 (6) serve as an interested person as defined  
21 in Subsection I of Section 45-5-101 NMSA 1978."

22 Section 9. Section 28-16B-4 NMSA 1978 (being Laws 2003,  
23 Chapter 280, Section 4) is amended to read:

24 "28-16B-4. CONTRACT MONITORING AND ENFORCEMENT.--

25 A. The office of guardianship shall monitor and

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1 enforce all guardianship contracts. In carrying out this duty,  
2 the office may:

3 (1) have access to case records, copies of  
4 court filings and reports, financial records and other records  
5 maintained by contractors related to contract services provided  
6 unless specifically sequestered by the court;

7 (2) petition the court of jurisdiction for  
8 access to records that have been sequestered;

9 (3) arrange visits with ~~wards~~ protected  
10 persons who are served by contract guardians; and

11 (4) pursue legal and other remedies against  
12 contractors for noncompliance with contract provisions.

13 B. The office shall protect and maintain the  
14 confidentiality of all client-specific information and records  
15 obtained to the same extent as required for the contractor and  
16 to any extent otherwise required by state or federal law."

17 Section 10. Section 28-16B-5 NMSA 1978 (being Laws 2003,  
18 Chapter 280, Section 5) is amended to read:

19 "28-16B-5. CONTRACTS.--A contract for guardianship  
20 services shall include:

21 A. a requirement that contractors and their staff  
22 meet nationally recognized standards for guardianship services;

23 B. a requirement for adoption and compliance with a  
24 code of ethics for guardians;

25 C. the maximum caseload for guardians;

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- 1           D. the fee schedule for services provided;
- 2           E. assurance that the civil rights of [~~wards~~  
3 protected persons served by the contractor shall be met,  
4 including the right to be served in the most integrated setting  
5 appropriate to the needs of the [~~ward~~] protected person;
- 6           F. provisions for access by the office of  
7 guardianship to records, [~~wards~~] protected persons and  
8 contractor staff as needed to monitor and enforce contract  
9 compliance and for quality assurance purposes; and
- 10          G. minimum financial accounting and reporting  
11 requirements."

12           Section 11. Section 28-16B-6 NMSA 1978 (being Laws 2003,  
13 Chapter 280, Section 6) is amended to read:

14           "28-16B-6. RESOLUTION OF COMPLAINTS.--

15           A. The office of guardianship shall establish by  
16 rule for the filing, investigation and resolution of complaints  
17 about guardianship services provided by contractors.

18           B. The office shall acknowledge receipt of the  
19 complaint, notify all parties involved and initiate an  
20 investigation within fifteen working days of the filing of the  
21 complaint.

22           C. A determination shall be made and a decision  
23 rendered on the complaint within sixty working days unless  
24 mutually agreed upon by all parties or unless a shorter time is  
25 required to protect the [~~ward~~] protected person.

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1           D. The office may refer complaints to other  
2 agencies for investigation or prosecution, as appropriate.

3           E. Complaints against the office or a staff member  
4 of the office shall be investigated by the human services  
5 department."

6           Section 12. Section 38-1-12 NMSA 1978 (being Laws 1935,  
7 Chapter 60, Section 10, as amended) is amended to read:

8           "38-1-12. SERVICE AGAINST INCOMPETENT.--Whenever there  
9 [~~shall be~~] is a guardian of the estate or a guardian of the  
10 person of an insane or incompetent person, duly appointed by a  
11 court of competent jurisdiction of this state, every process  
12 against [~~such~~] the insane or incompetent person shall be served  
13 upon either of [~~such~~] the guardians in [~~such~~] the manner as may  
14 be provided by law for service of process, including service by  
15 publication. Service of process so made shall be considered as  
16 proper service upon the [~~ward~~] protected person. In all other  
17 cases, process shall be served upon the [~~ward~~] protected person  
18 in the same manner as upon competent or sane persons."

19           Section 13. Section 38-4-16 NMSA 1978 (being Laws 1925,  
20 Chapter 22, Section 6, as amended) is amended to read:

21           "38-4-16. COMPROMISE BY GUARDIAN AD LITEM.--The guardian  
22 ad litem so appearing in any action or proceeding for and on  
23 behalf of an incapacitated person shall have power to  
24 compromise the same and to agree to the judgment to be entered  
25 [~~therein~~] in the action or proceeding for or against [~~his ward~~]

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1 the protected person, subject to the approval of the court in  
2 which ~~[such]~~ the suit is pending."

3 Section 14. Section 43-1-11 NMSA 1978 (being Laws 1977,  
4 Chapter 279, Section 10, as amended) is amended to read:

5 "43-1-11. COMMITMENT OF ADULTS FOR THIRTY-DAY PERIOD.--

6 A. Every adult client involuntarily admitted to an  
7 evaluation facility pursuant to Section 43-1-10 NMSA 1978 has  
8 the right to a hearing within seven days of admission unless  
9 waived after consultation with counsel. If the division,  
10 physician or evaluation facility decides to seek commitment of  
11 the client for evaluation and treatment, a petition shall be  
12 filed with the court within five days of admission requesting  
13 the commitment. The petition shall include a description of  
14 the specific behavior or symptoms of the client ~~[which]~~ that  
15 evidence a likelihood of serious harm to the client or others  
16 and shall include an initial screening report by the evaluating  
17 physician individually or with the assistance of a mental  
18 health professional or, if a physician is not available, by a  
19 mental health professional acceptable to the court. The  
20 petition shall list the prospective witnesses for commitment  
21 and a summary of the matters to which they will testify.  
22 Copies of the petition shall be served on the client, the  
23 client's guardian, and treatment guardian if one has been  
24 appointed, and the client's attorney.

25 B. At the hearing, the client shall be represented

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1 by counsel and shall have the right to present evidence on  
2 [~~his~~] the client's behalf, including testimony by an  
3 independent mental health professional of [~~his~~] the client's  
4 own choosing, to cross-examine witnesses and to be present at  
5 the hearing. The presence of the client may be waived upon a  
6 showing to the court that the client knowingly and voluntarily  
7 waives [~~his~~] the right to be present. A complete record of all  
8 proceedings shall be made.

9 C. A court-appointed guardian for an adult involved  
10 in an involuntary commitment proceeding shall have automatic  
11 standing to appear at all stages of the proceeding and shall be  
12 allowed to testify by telephone or through affidavit if  
13 circumstances make live testimony too burdensome.

14 D. The court shall include in its findings the  
15 guardian's opinion regarding the need for involuntary treatment  
16 or a statement detailing the efforts made to ascertain the  
17 guardian's opinion.

18 [~~G.~~] E. Upon completion of the hearing, the court may  
19 order a commitment for evaluation and treatment not to exceed  
20 thirty days if the court finds by clear and convincing evidence  
21 that:

22 (1) as a result of a mental disorder, the client  
23 presents a likelihood of serious harm to [~~himself~~] the client's  
24 own self or others;

25 (2) the client needs and is likely to benefit

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1 from the proposed treatment; and

2 (3) the proposed commitment is consistent with  
3 the treatment needs of the client and with the least drastic  
4 means principle.

5 [~~D.~~] F. Once the court has made the findings set  
6 forth in Subsection [~~G.~~] E of this section, the court shall hear  
7 further evidence as to whether the client is capable of  
8 informed consent. If the court determines that the client is  
9 incapable of informed consent, the court shall appoint for the  
10 client a treatment guardian who shall have only those powers  
11 enumerated in Section 43-1-15 NMSA 1978.

12 [~~E. Any~~] G. An interested person who reasonably  
13 believes that an adult is suffering from a mental disorder and  
14 presents a likelihood of serious harm to [~~himself~~] the adult's  
15 own self or others, but does not require emergency care, may  
16 request the district attorney to investigate and determine  
17 whether reasonable grounds exist to commit the adult for a  
18 thirty-day period of evaluation and treatment. The applicant  
19 may present to the district attorney any medical reports or  
20 other evidence immediately available to [~~him~~] the applicant,  
21 but shall not be required to obtain a medical report or other  
22 particular evidence in order to make [~~such~~] a petition. The  
23 district attorney shall act on the petition within seventy-two  
24 hours. If the district attorney determines that reasonable  
25 grounds exist to commit the adult, [~~he~~] the district attorney

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1 may petition the court for a hearing. The court may issue a  
2 summons to the proposed client to appear at the time designated  
3 for a hearing, which shall be not less than five days from the  
4 date the petition is served. If the proposed client is  
5 summoned and fails to appear at the proposed time and upon a  
6 finding of the court that the proposed client has failed to  
7 appear, or appears without having been evaluated, the court may  
8 order the proposed client to be detained for evaluation as  
9 provided for in Subsection C of Section 43-1-10 NMSA 1978.

10 ~~[F-]~~ H. Any hearing provided for pursuant to  
11 Subsection ~~[E]~~ G of this section shall be conducted in  
12 conformance with the requirements of Subsection B of this  
13 section."

14 Section 15. Section 43-1-12 NMSA 1978 (being Laws 1977,  
15 Chapter 279, Section 11, as amended) is amended to read:

16 "43-1-12. EXTENDED COMMITMENT OF ADULTS.--

17 A. The department, physician or evaluation facility  
18 may file a petition for extended commitment within twenty-one  
19 days after the beginning of the thirty-day commitment. The  
20 petition ~~[must]~~ shall explain the necessity for extended  
21 commitment, specify the treatment ~~[which]~~ that has been  
22 provided during the evaluation and ~~[must]~~ include an individual  
23 treatment plan for the proposed commitment period. The  
24 petition shall ~~[also]~~ list the prospective witnesses for  
25 commitment and a summary of the matters to which they will

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1 testify. Copies of the petition shall be served on the client,  
2 the client's guardian, and treatment guardian if one has been  
3 appointed, and the client's attorney.

4 B. A hearing shall be held upon the petition prior to  
5 the expiration of the thirty-day commitment period, at which  
6 the client shall have all rights granted to ~~[him]~~ the client  
7 under Section ~~[34-2A-10 NMSA 1953]~~ 43-1-11 NMSA 1978 and in  
8 addition shall have a right to a trial by a six-person jury, if  
9 requested, and to an expeditious appeal, unless waived.

10 C. A court-appointed guardian for an adult involved  
11 in an involuntary commitment proceeding shall have automatic  
12 standing to appear at all stages of the proceeding and shall be  
13 allowed to testify by telephone or through affidavit if  
14 circumstances make live testimony too burdensome.

15 D. The court shall include in its findings the  
16 guardian's opinion regarding the need for involuntary treatment  
17 or a statement detailing the efforts made to ascertain the  
18 guardian's opinion.

19 ~~[G.]~~ E. If, at the conclusion of the hearing, the  
20 fact-finder determines by clear and convincing evidence that  
21 the client presents a likelihood of harm to ~~[himself]~~ the  
22 client's self or to others, that extended treatment is likely  
23 to improve the client's condition and that the proposed  
24 extended commitment is consistent with the least drastic means  
25 principle, the court shall order commitment of the client for a

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1 period not to exceed six months, except that when the client  
2 has been committed for two consecutive periods of commitment,  
3 any commitment commencing thereafter shall not exceed one year.  
4 At the expiration of the commitment order, the client may be  
5 detained only after a new commitment hearing, unless waived  
6 after consultation with the client's attorney, and entry of a  
7 new order for commitment not to exceed six months.

8 ~~[D.—Any]~~ F. A client involuntarily referred for  
9 treatment pursuant to this section shall be entitled to a  
10 reexamination of the order for ~~[his]~~ the client's involuntary  
11 referral for treatment on ~~[his]~~ the client's own petition, or  
12 that of ~~[his]~~ the client's legal guardian, parent, spouse,  
13 relative or friend, to the district court of the county in  
14 which ~~[he]~~ the client resides or is detained. Upon receipt of  
15 the petition, the court shall conduct a proceeding in  
16 accordance with this section, except that ~~[such]~~ a proceeding  
17 shall not be required to be conducted if the petition is filed  
18 sooner than sixty days after the issuance of the order for  
19 involuntary referral for treatment or sooner than sixty days  
20 after the filing of a previous petition under this subsection.

21 ~~[E.—]~~ G. Nothing in this section shall limit the right  
22 of a client to petition the court for a writ of habeas corpus.

23 ~~[F.—]~~ H. Nothing in this code shall prohibit a client  
24 from seeking voluntary admission under Section ~~[34-2A-13 NMSA~~  
25 ~~1953]~~ 43-1-14 NMSA 1978.

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1           ~~[G.]~~ I. No mental health treatment facility is  
2 required to detain, treat or provide services to a client when  
3 the client does not require such detention, treatment or  
4 services."

5           Section 16. Section 43-1-13 NMSA 1978 (being Laws 1977,  
6 Chapter 279, Section 12, as amended) is amended to read:

7           "43-1-13. INVOLUNTARY COMMITMENT OF DEVELOPMENTALLY  
8 DISABLED ADULTS TO RESIDENTIAL CARE.--

9           A. A guardian appointed pursuant to the Uniform  
10 Probate Code may file an application with the department or an  
11 evaluation facility seeking residential habilitation services  
12 for ~~[his ward]~~ the protected person. The application shall set  
13 forth the basis for the guardian's belief that residential  
14 habilitation is necessary and shall include a copy of pertinent  
15 medical and psychological evaluations ~~[which]~~ that have been  
16 completed.

17           B. Upon receipt of an application filed according to  
18 Subsection A of this section, the department or evaluation  
19 facility may accept the proposed client for a period of  
20 evaluation and treatment not to exceed fourteen days. An  
21 evaluation facility shall prepare an ~~[individual]~~  
22 individualized habilitation plan ~~[which]~~ that shall be  
23 consistent with the least drastic means principle.

24           C. If the habilitation plan recommends residential  
25 services, the department or evaluation facility shall file with

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1 the court a petition for extended residential placement. Upon  
2 receipt of the petition, the court shall appoint an attorney to  
3 represent the proposed client. Notice of the hearing scheduled  
4 on the petition and a copy of the habilitation plan shall be  
5 given to the proposed client, [~~his~~] the client's attorney and  
6 [~~his~~] the client's guardian. The petition shall contain a list  
7 of the names and addresses of proposed witnesses.

8 D. At the hearing on the petition, the proposed  
9 client shall be represented by counsel and shall have the right  
10 to present evidence on [~~his~~] the proposed client's behalf,  
11 including testimony of a developmental disability professional  
12 of [~~his~~] the proposed client's choosing; to cross-examine  
13 witnesses; to be present at the hearing; and to trial by a six-  
14 person jury, if requested. A complete record of the hearing  
15 shall be made. There shall be a right to an expeditious  
16 appeal.

17 E. The guardian of an adult involved in a commitment  
18 proceeding for extended residential habilitation services shall  
19 have automatic standing to appear at all stages of the  
20 proceeding and shall be allowed to testify by telephone or  
21 through affidavit if circumstances make live testimony too  
22 burdensome.

23 F. The court shall include in its findings the  
24 guardian's opinion regarding the need for residential  
25 habilitation services or a statement detailing the efforts made

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1 to ascertain the guardian's opinion.

2 [E.] G. The court shall order residential placement  
3 of the proposed client if it is established by clear and  
4 convincing evidence that the proposed client has a  
5 developmental disability [~~which~~] that creates an imminent  
6 likelihood of serious harm to [~~himself~~] the proposed client's  
7 self or to others, or the person is so greatly disabled that  
8 residential services would be in [~~his~~] the person's best  
9 interest and that such residential placement is, in [~~his~~] the  
10 person's case, the least drastic means. The court's order of  
11 residential placement shall be for a period not to exceed six  
12 months. At the expiration of the commitment order, the client  
13 may be detained only after a new commitment hearing, unless  
14 waived after consultation with the client's attorney, and entry  
15 of a new order for commitment not to exceed six months.

16 [F.] H. The court shall order [~~that~~] placement  
17 [~~which~~] that is least restrictive to the client and may order  
18 attendance and participation as a nonresident in habilitation  
19 programs conducted at residential or nonresidential facilities.

20 [G.] I. Any client involuntarily referred for  
21 habilitation treatment shall be entitled to a reexamination of  
22 the order for [~~his~~] the client's involuntary referral for  
23 habilitation and treatment on [~~his~~] the client's own petition,  
24 or that of [~~his~~] the client's legal guardian, parent, spouse,  
25 relative or friend, to the district court of the county in

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1 which ~~[he]~~ the client resides or is detained. Upon receipt of  
2 the petition, the court shall conduct or cause to be conducted  
3 by a special commissioner a proceeding in accordance with this  
4 section, except that ~~[such]~~ a proceeding shall not be required  
5 to be conducted if the petition is filed sooner than sixty days  
6 after the issuance of the order for involuntary referral for  
7 habilitation and treatment or sooner than sixty days after the  
8 filing of a previous petition under this subsection.

9 ~~[H.]~~ J. Nothing in this section shall limit the right  
10 of a client to petition the court for a writ of habeas corpus.

11 ~~[F.]~~ K. No developmental disabilities treatment or  
12 habilitation facility is required to detain, treat or provide  
13 services to a client when the client does not appear to require  
14 ~~[such]~~ detention, treatment or habilitation."

15 Section 17. Section 43-1-14 NMSA 1978 (being Laws 1977,  
16 Chapter 279, Section 13, as amended) is amended to read:

17 "43-1-14. VOLUNTARY ADMISSION TO RESIDENTIAL TREATMENT OR  
18 HABILITATION.--

19 A. ~~[Consistent with the provisions of Section~~  
20 ~~34-2A-15 NMSA 1953, any]~~ A person may voluntarily ~~[present~~  
21 ~~himself for]~~ seek admission to residential treatment or  
22 habilitation.

23 B. A guardian appointed under the Uniform Probate  
24 Code, an agent or surrogate under the Uniform Health-Care  
25 Decisions Act or an agent under the Mental Health Care

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1 Treatment Decisions Act shall not consent to the admission of  
2 an individual to a mental health care facility. If a guardian  
3 has full power or limited power that includes medical or mental  
4 health treatment or, if the individual's written advance  
5 health-care directive or advance directive for mental health  
6 treatment expressly permits treatment in a mental health care  
7 facility, the guardian, agent or surrogate may present the  
8 person to a facility only for evaluation for admission pursuant  
9 to Subsection E of Section 43-1-10 NMSA 1978.

10 [B.] C. Nothing in this section shall be construed as  
11 depriving voluntary clients of any right given to involuntary  
12 clients.

13 [E. Any] D. A client voluntarily admitted to  
14 residential treatment or habilitation [~~shall have~~] has the  
15 right to immediate discharge from the residential facility upon  
16 request, unless the director of the facility or a physician  
17 determines that the client requires continued confinement and  
18 meets the criteria for involuntary residential treatment or  
19 habilitation under the code. If the director or physician so  
20 determines, [~~they~~] the director or physician shall, on the  
21 first business day following the client's request for release,  
22 request the district attorney to initiate commitment  
23 proceedings under the code. The client has a right to a  
24 hearing on [~~his~~] the client's confinement within five days of  
25 [~~his~~] the client's request for release."

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1 Section 18. Section 43-1-15 NMSA 1978 (being Laws 1977,  
2 Chapter 279, Section 14, as amended) is amended to read:

3 "43-1-15. CONSENT TO TREATMENT--ADULT CLIENTS.--

4 A. No psychotropic medication, psychosurgery,  
5 convulsive therapy, experimental treatment or behavior  
6 modification program involving aversive stimuli or substantial  
7 deprivations shall be administered to ~~[any]~~ a client without  
8 proper consent. If the client is capable of understanding the  
9 proposed nature of treatment and its consequences and is  
10 capable of informed consent, ~~[his]~~ the client's consent shall  
11 be obtained before the treatment is performed. A client shall  
12 not be presumed to be incapable of giving consent for  
13 administration of psychotropic medications solely because ~~[he]~~  
14 the client has been involuntarily committed to a treatment  
15 facility or is awaiting a hearing on whether ~~[he]~~ the client  
16 should be involuntarily committed to a treatment facility.

17 B. If the mental health or developmental disabilities  
18 professional or physician who is proposing this or any other  
19 course of treatment or any other interested person believes  
20 that the client is incapable of informed consent, ~~[he]~~ the  
21 mental health or developmental disabilities professional or  
22 physician or other interested person may petition the court for  
23 the appointment of a treatment guardian to make a substitute  
24 decision for the client.

25 C. This original petition shall be served on the

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1 client and [~~his~~] the client's attorney. A hearing on the  
2 petition shall be held within three court days. At the  
3 hearing, the client shall be represented by counsel and shall  
4 have the right to be present, to present witnesses and to  
5 cross-examine opposing witnesses.

6 D. When appointing a treatment guardian for an adult,  
7 the court shall give priority to a court-appointed guardian or,  
8 if no guardian has been appointed by a court, to an agent  
9 designated or nominated by the client when the client had  
10 capacity.

11 E. If after the hearing the court finds by clear  
12 convincing evidence that the client is not capable of making  
13 [~~his~~] the client's own treatment decisions, the court may order  
14 the appointment of a treatment guardian.

15 F. The treatment guardian shall make a decision on  
16 behalf of the client whether to accept treatment, depending on  
17 whether the treatment appears to be in the client's best  
18 interest and is the least drastic means for accomplishing the  
19 treatment objective. In making [~~his~~] a decision, the treatment  
20 guardian shall consult with the client and consider [~~his~~] the  
21 client's expressed opinions, if any, even if those opinions do  
22 not constitute valid consent or rejection of treatment. [~~He~~]  
23 The treatment guardian shall give consideration to [~~any~~]  
24 previous decisions made by the client in similar circumstances  
25 when the client was able to make treatment decisions.

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1           G. If a client, who is not a resident of a medical  
2 facility and for whom a treatment guardian has been appointed,  
3 refuses to comply with the decision of the treatment guardian,  
4 the treatment guardian may apply to the court for an  
5 enforcement order. Such an order may authorize [~~any~~] a peace  
6 officer to take the client into custody and to transport [~~him~~]  
7 the client to an evaluation facility and may authorize the  
8 facility forcibly to administer treatment.

9           H. The treatment guardian shall consult with the  
10 physician or other professional who is proposing treatment, the  
11 client's attorney and interested friends, [~~or~~] relatives or  
12 other agents or guardians of the client [~~as he deems~~  
13 ~~appropriate~~] to the extent reasonably practical in making [~~his~~]  
14 a decision.

15           I. If the client, physician or other professional  
16 wishes to appeal the decision of the treatment guardian, [~~he~~]  
17 the client, physician or other professional may do so, filing  
18 an appeal with the court within three calendar days of  
19 receiving notice of the treatment guardian's decision. In such  
20 a decision, the client shall be represented by counsel. The  
21 court may overrule the treatment guardian's decision if it  
22 finds that decision to be against the best interest of the  
23 client.

24           [~~G.~~] J. When the court appoints a treatment guardian,  
25 it shall specify the length of time during which [~~he~~] the

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1 treatment guardian may exercise [~~his~~] the treatment guardian's  
2 powers, up to a maximum period of one year. If at the end of  
3 [~~his~~] the guardianship period the treatment guardian believes  
4 that the client is still incapable of making [~~his~~] the client's  
5 own treatment decisions, [~~he~~] the treatment guardian shall  
6 petition the court for reappointment or for appointment of a  
7 new treatment guardian. The petition shall be served on the  
8 client, the client's attorney and the previously appointed  
9 treatment guardian if filed by another party. The guardianship  
10 shall be extended or a new guardian shall be appointed only if  
11 the court finds the client is, at the time of the hearing,  
12 incapable of understanding and expressing an opinion regarding  
13 treatment decisions. The client shall be represented by  
14 counsel and shall have the right to be present and present  
15 evidence at all such hearings.

16 [~~D-~~] K. If during a period of a treatment guardian's  
17 power, the treatment guardian, the client, the treatment  
18 provider, a member of the client's family or the client's  
19 attorney or another person believes that the client has  
20 regained competence to make [~~his~~] the client's own treatment  
21 decisions, [~~he~~] that person shall petition the court for a  
22 termination of the treatment guardianship. If the court finds  
23 the client is capable of making [~~his~~] the client's own  
24 treatment decisions, it shall terminate the power of the  
25 treatment guardian and restore to the client the power to make

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1     ~~[his]~~ the client's own treatment decisions.

2             ~~[E-]~~ L. A treatment guardian shall only have those  
3 powers enumerated in the code, unless the treatment guardian  
4 has also been appointed a guardian under the Uniform Probate  
5 Code pursuant to provisions of Section 45-5-303 NMSA 1978.

6     ~~[Any]~~ A person carrying out the duties of a treatment guardian  
7 as provided in this section shall not be liable in any civil or  
8 criminal action so long as the treatment guardian is not acting  
9 in bad faith or with malicious purpose.

10            ~~[F-]~~ M. If a licensed physician believes that the  
11 administration of psychotropic medication is necessary to  
12 protect the client from serious harm ~~[which]~~ that would occur  
13 while the provisions of Subsection B of this section are being  
14 satisfied, ~~[he]~~ the licensed physician may administer the  
15 medication on an emergency basis. When medication is  
16 administered to a client on an emergency basis, the treating  
17 physician shall prepare and place in the client's medical  
18 records a report explaining the nature of the emergency and the  
19 reason that no treatment less drastic than administration of  
20 psychotropic medication without proper consent would have  
21 protected the client from serious harm. Upon the sworn  
22 application of the treating physician, the court may issue an  
23 order permitting the treating physician to continue to  
24 administer psychotropic medication until a treatment guardian  
25 is appointed, if the requirements of Subsection B of this

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1 section for appointment of a treatment guardian are in the  
2 process of being satisfied in a timely manner."

3 Section 19. Section 43-1-19 NMSA 1978 (being Laws 1977,  
4 Chapter 279, Section 18, as amended) is amended to read:

5 "43-1-19. DISCLOSURE OF INFORMATION.--

6 A. Except as otherwise provided in the code, no  
7 person shall, without the authorization of the client, disclose  
8 or transmit any confidential information from which a person  
9 well acquainted with the client might recognize the client as  
10 the described person, or any code, number or other means that  
11 can be used to match the client with confidential information  
12 regarding the client.

13 B. Authorization from the client shall not be  
14 required for the disclosure or transmission of confidential  
15 information in the following circumstances:

16 (1) when the request is from a mental health or  
17 developmental disability professional or from an employee or  
18 trainee working with a person with a mental disability or  
19 developmental disability, to the extent that the practice,  
20 employment or training on behalf of the client requires access  
21 to such information is necessary;

22 (2) when such disclosure is necessary to protect  
23 against a clear and substantial risk of imminent serious  
24 physical injury or death inflicted by the client on the  
25 client's self or another;

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1 (3) when the disclosure of such information is  
2 to the primary caregiver of the client and the disclosure is  
3 only of information necessary for the continuity of the  
4 client's treatment in the judgment of the treating physician or  
5 certified psychologist who discloses the information; or

6 (4) when such disclosure is to an insurer  
7 contractually obligated to pay part or all of the expenses  
8 relating to the treatment of the client at the residential  
9 facility. The information disclosed shall be limited to data  
10 identifying the client, facility and treating or supervising  
11 physician and the dates and duration of the residential  
12 treatment. It shall not be a defense to an insurer's  
13 obligation to pay that the information relating to the  
14 residential treatment of the client, apart from information  
15 disclosed pursuant to this section, has not been disclosed to  
16 the insurer.

17 C. No authorization given for the transmission or  
18 disclosure of confidential information shall be effective  
19 unless it:

20 (1) is in writing and signed; and

21 (2) contains a statement of the client's right  
22 to examine and copy the information to be disclosed, the name  
23 or title of the proposed recipient of the information and a  
24 description of the use that may be made of the information.

25 D. The client has a right of access to confidential

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1 information and has the right to make copies of any information  
2 and to submit clarifying or correcting statements and other  
3 documentation of reasonable length for inclusion with the  
4 confidential information. The statements and other  
5 documentation shall be kept with the relevant confidential  
6 information, shall accompany it in the event of disclosure and  
7 shall be governed by the provisions of this section to the  
8 extent they contain confidential information. Nothing in this  
9 subsection shall prohibit the denial of access to such records  
10 when a physician or other mental health or developmental  
11 disabilities professional believes and notes in the client's  
12 medical records that such disclosure would not be in the best  
13 interests of the client. In any such case, the client has the  
14 right to petition the court for an order granting such access.

15 E. Where there exists evidence that the client whose  
16 consent to disclosure of confidential information is sought is  
17 incapable of giving or withholding valid consent and the client  
18 does not have a guardian or treatment guardian appointed by a  
19 court, the person seeking such authorization shall petition the  
20 court for the appointment of a treatment guardian to make a  
21 substitute decision for the client, except that if the client  
22 is less than fourteen years of age, the client's parent or  
23 guardian is authorized to consent to disclosure on behalf of  
24 the client.

25 F. Information concerning a client disclosed under

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1 this section shall not be released to any other person, agency  
2 or governmental entity or placed in files or computerized data  
3 banks accessible to any persons not otherwise authorized to  
4 obtain information under this section.

5 G. Nothing in the code shall limit the  
6 confidentiality rights afforded by federal statute or  
7 regulation.

8 H. A person appointed as a treatment guardian in  
9 accordance with the Uniform Health-Care Decisions Act may act  
10 as the client's personal representative pursuant to the federal  
11 Health Insurance Portability and Accountability Act of 1996,  
12 Sections 1171-1179 of the Social Security Act, 42 U.S.C.  
13 Section 1320d, as amended, and applicable federal regulations  
14 to obtain access to the client's protected health information,  
15 including mental health information and relevant physical  
16 health information, and may communicate with the client's  
17 health-care providers in furtherance of such treatment."

18 Section 20. Section 45-1-201 NMSA 1978 (being Laws 1993,  
19 Chapter 174, Section 4, as amended) is amended to read:

20 "45-1-201. DEFINITIONS.--

21 A. As used in the Uniform Probate Code, unless the  
22 context otherwise requires:

23 (1) "agent" includes an attorney-in-fact under a  
24 durable or nondurable power of attorney, an individual  
25 authorized to make decisions concerning another's health care

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1 and an individual authorized to make decisions for another  
2 under a natural death act;

3 (2) "application" means a written request to the  
4 probate court for an order of informal probate or appointment  
5 pursuant to Sections 45-3-301 through 45-3-311 NMSA 1978;

6 (3) "beneficiary", as it relates to a trust  
7 beneficiary, includes a person who has any present or future  
8 interest, vested or contingent, and also includes the owner of  
9 an interest by assignment or other transfer; as it relates to a  
10 charitable trust, includes any person entitled to enforce the  
11 trust; as it relates to a "beneficiary of a beneficiary  
12 designation", refers to a beneficiary of an insurance or  
13 annuity policy, of an account with POD designation, of a  
14 security registered in beneficiary form (TOD) or of a pension,  
15 profit-sharing, retirement or similar benefit plan or other  
16 nonprobate transfer at death; and, as it relates to a  
17 "beneficiary designated in a governing instrument", includes a  
18 grantee of a deed, a devisee, a trust beneficiary, a  
19 beneficiary of a beneficiary designation, a donee, appointee or  
20 taker in default of a power of appointment or a person in whose  
21 favor a power of attorney or a power held in any individual,  
22 fiduciary or representative capacity is exercised;

23 (4) "beneficiary designation" refers to a  
24 governing instrument naming a beneficiary of an insurance or  
25 annuity policy, of an account with POD designation, of a

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1 security registered in beneficiary form (TOD) or of a pension,  
2 profit-sharing, retirement or similar benefit plan or other  
3 nonprobate transfer at death;

4 (5) "child" includes an individual entitled to  
5 take as a child pursuant to the Uniform Probate Code by  
6 intestate succession from the parent whose relationship is  
7 involved and excludes a person who is only a stepchild, a  
8 foster child, a grandchild or any more remote descendant;

9 (6) "claims", in respect to estates of decedents  
10 and protected persons, includes liabilities of the decedent or  
11 protected person, whether arising in contract, in tort or  
12 otherwise and liabilities of the estate that arise at or after  
13 the death of the decedent or after the appointment of a  
14 conservator, including funeral expenses and expenses of  
15 administration. "Claims" does not include estate or  
16 inheritance taxes or demands or disputes regarding title of a  
17 decedent, an incapacitated person or a minor [~~ward~~] protected  
18 person to specific assets alleged to be included in the estate;

19 (7) "conservator" means a person who is  
20 appointed by a court to manage the property or financial  
21 affairs or both of an incapacitated person or a minor [~~ward~~]  
22 protected person;

23 (8) "descendant" of an individual means all of  
24 [~~his~~] the individual's descendants of all generations, with the  
25 relationship of parent and child at each generation being

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1 determined by the definition of child and parent contained in  
2 the Uniform Probate Code;

3 (9) "devise", when used as a noun, means a  
4 testamentary disposition of real or personal property and, when  
5 used as a verb, means to dispose of real or personal property  
6 by will;

7 (10) "devisee" means a person designated in a  
8 will to receive a devise. For the purposes of Chapter 45,  
9 Article 3 NMSA 1978, in the case of a devise to an existing  
10 trust or trustee or to a trustee ~~[on]~~ or trust described by  
11 will, the trust or trustee is the devisee and the beneficiaries  
12 are not devisees;

13 (11) "distributee" means ~~[any]~~ a person who has  
14 received property of a decedent from ~~[his]~~ the decedent's  
15 personal representative other than as a creditor or purchaser.  
16 A testamentary trustee is a distributee only to the extent of  
17 distributed assets or increment thereto remaining in ~~[his]~~ the  
18 testamentary trustee's hands. A beneficiary of a testamentary  
19 trust to whom the trustee has distributed property received  
20 from a personal representative is a distributee of the personal  
21 representative. For the purposes of this paragraph,  
22 "testamentary trustee" includes a trustee to whom assets are  
23 transferred by will, to the extent of the devised assets;

24 (12) "estate" includes the property of the  
25 decedent, trust or other person whose affairs are subject to

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1 the Uniform Probate Code as originally constituted and as it  
2 exists from time to time during administration;

3 (13) "exempt property" means that property of a  
4 decedent's estate that is described in Section 45-2-403 NMSA  
5 1978;

6 (14) "fiduciary" includes a personal  
7 representative, guardian, guardian ad litem, conservator and  
8 trustee;

9 (15) "foreign personal representative" means a  
10 personal representative appointed by another jurisdiction;

11 (16) "formal proceedings" means proceedings  
12 conducted before a judge with notice to interested persons;

13 (17) "governing instrument" means a deed, will,  
14 trust, insurance or annuity policy, account with POD  
15 designation, security registered in beneficiary form (TOD),  
16 pension, profit-sharing, retirement or similar benefit plan,  
17 instrument creating or exercising a power of appointment or a  
18 power of attorney or a dispositive, appointive or nominative  
19 instrument of ~~[any]~~ a similar type;

20 (18) "guardian" means a person who has qualified  
21 to provide for the care, custody or control of the person of a  
22 minor or incapacitated person pursuant to testamentary or court  
23 appointment, but excludes one who is merely a guardian ad  
24 litem;

25 (19) "guardian ad litem" means a person

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1 appointed by the district court to represent and protect the  
2 interests of a minor or an incapacitated person in connection  
3 with litigation or any other court proceeding;

4 (20) "heirs", except as controlled by Section  
5 45-2-711 NMSA 1978, means persons, including the surviving  
6 spouse and the state, who are entitled under the statutes of  
7 intestate succession to the property of a decedent;

8 (21) "incapacitated person" means an individual  
9 described in Section 45-5-101 NMSA 1978;

10 (22) "informal proceedings" means those  
11 proceedings conducted without notice to interested persons  
12 before the probate court for probate of a will or appointment  
13 of a personal representative, except as provided for in Section  
14 45-3-306 NMSA 1978;

15 (23) "interested person" includes heirs,  
16 devisees, children, spouses, creditors, beneficiaries and any  
17 others having a property right in or claim against a trust  
18 estate or the estate of a decedent, a minor ~~[ward]~~ protected  
19 person or an incapacitated person. "Interested person" also  
20 includes persons having priority for appointment as personal  
21 ~~[representative]~~ representatives and other fiduciaries  
22 representing interested persons. The meaning as it relates to  
23 particular persons may vary from time to time and must be  
24 determined according to the particular purposes of, and matter  
25 involved in, ~~[any]~~ a proceeding. "Interested person" does not

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1 apply to the provisions of Chapter 45, Article 5 NMSA 1978;

2 (24) "issue" of a person means all of [~~his~~] the  
3 person's descendants of all generations, with the relationship  
4 of parent and child at each generation being determined by the  
5 definition of child and parent contained in the Uniform Probate  
6 Code;

7 (25) "lease" includes an oil, gas or other  
8 mineral lease;

9 (26) "letters" includes letters testamentary,  
10 letters of guardianship, letters of administration and letters  
11 of conservatorship;

12 (27) "minor" means a person who has not reached  
13 eighteen years of age;

14 (28) "mortgage" means any conveyance, agreement  
15 or arrangement in which property is encumbered or used as  
16 security;

17 (29) "nonresident decedent" means a decedent who  
18 was domiciled in another jurisdiction at the time of [~~his~~]  
19 death;

20 (30) "organization" means a corporation,  
21 business trust, estate, trust, partnership, joint venture,  
22 association, government or governmental subdivision or agency  
23 or any other legal or commercial entity;

24 (31) "parent" includes any person entitled to  
25 take, or who would be entitled to take if the child died

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1 without a will, as a parent pursuant to the Uniform Probate  
2 Code by intestate succession from the child whose relationship  
3 is in question and excludes any person who is only a  
4 stepparent, foster parent or grandparent;

5 (32) "payor" means a trustee, insurer, business  
6 entity, employer, government, governmental agency or  
7 subdivision or any other person authorized or obligated by law  
8 or a governing instrument to make payments;

9 (33) "person" means an individual or an  
10 organization;

11 (34) "personal representative" includes  
12 executor, administrator, successor personal representative,  
13 special administrator and persons who perform substantially the  
14 same function under the law governing their status. "General  
15 personal representative" excludes special administrator;

16 (35) "petition" means a written request to the  
17 probate court for an order after notice;

18 (36) "proceeding" includes action at law and  
19 suit in equity;

20 (37) "property" includes both real and personal  
21 property or any interest therein and means anything that may be  
22 the subject of ownership;

23 (38) "protected person" is as defined in Section  
24 45-5-101 NMSA 1978;

25 (39) "protective proceeding" means a proceeding

1 described in Section 45-5-101 NMSA 1978;

2 (40) "security" includes any note, stock,  
3 treasury stock, bond, debenture, evidence of indebtedness,  
4 certificate of interest or participation in an oil, gas or  
5 mining title or lease or in payments out of production under  
6 such a title or lease, collateral trust certificate,  
7 transferable share, voting trust certificate or, in general,  
8 any interest or instrument commonly known as a security or any  
9 certificate of interest or participation, any temporary or  
10 interim certificate, receipt or certificate of deposit for or  
11 any warrant or right to subscribe to or purchase any of the  
12 foregoing;

13 (41) "settlement", in reference to a decedent's  
14 estate, includes the full process of administration,  
15 distribution and closing;

16 (42) "special administrator" means a personal  
17 representative as described by Sections 45-3-614 through  
18 45-3-618 NMSA 1978;

19 (43) "state" means a state of the United States,  
20 the District of Columbia, the commonwealth of Puerto Rico or  
21 any territory or insular possession subject to the jurisdiction  
22 of the United States;

23 (44) "successor personal representative" means a  
24 personal representative, other than a special administrator,  
25 who is appointed to succeed a previously appointed personal

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1 representative;

2 (45) "successors" means persons, other than  
3 creditors, who are entitled to property of a decedent under  
4 [~~his~~] the decedent's will or the Uniform Probate Code;

5 (46) "supervised administration" refers to the  
6 proceedings described in Article III, Part 5 of the Uniform  
7 Probate Code;

8 (47) "survive" means that an individual has  
9 neither predeceased an event, including the death of another  
10 individual, nor is deemed to have predeceased an event pursuant  
11 to Section 45-2-104 or 45-2-702 NMSA 1978. "Survive" includes  
12 its derivatives, such as "survives", "survived", "survivor" and  
13 "surviving";

14 (48) "testacy proceeding" means a proceeding to  
15 establish a will or determine intestacy;

16 (49) "testator" includes an individual of either  
17 sex;

18 (50) "trust" includes an express trust, private  
19 or charitable, with additions thereto, wherever and however  
20 created. "Trust" also includes a trust created or determined  
21 by judgment or decree under which the trust is to be  
22 administered in the manner of an express trust. "Trust"  
23 excludes other constructive trusts and excludes resulting  
24 trusts, [~~conservatorship~~] conservatorships, personal  
25 representatives, trust accounts as defined in Article VI of the

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1 Uniform Probate Code, custodial arrangements, including those  
2 created under the [~~Uniform Gifts to Minors Act or the~~] Uniform  
3 Transfer to Minors Act, business trusts providing for  
4 certificates to be issued to beneficiaries, common trust funds,  
5 voting trusts, security arrangements, liquidation trusts,  
6 trusts for the primary purpose of paying debts, dividends,  
7 interest, salaries, wages, profits, pensions or employee  
8 benefits of any kind and any arrangement under which a person  
9 is nominee or escrowee for another;

10 (51) "trustee" includes an original, additional  
11 or successor trustee, whether or not appointed or confirmed by  
12 court; and

13 [~~(52) "ward" means a person for whom a guardian~~  
14 ~~has been appointed; and~~

15 ~~(53)}~~ (52) "will" includes codicil and any  
16 testamentary instrument that merely appoints a personal  
17 representative, revokes or revises another will, nominates a  
18 guardian or expressly excludes or limits the right of an  
19 individual or class to succeed to property of the decedent  
20 passing by intestate succession. "Will" does not include a  
21 holographic will.

22 B. The definitions in Subsection A of this section  
23 are made subject to additional definitions contained in  
24 subsequent articles that are applicable to specific articles."

25 Section 21. Section 45-1-303 NMSA 1978 (being Laws 1975,  
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1 Chapter 257, Section 1-303) is amended to read:

2 "45-1-303. VENUE--MULTIPLE PROCEEDINGS--TRANSFER.--

3 A. Subject to the provisions of Section [~~3-201~~]  
4 45-3-201 NMSA 1978, where a proceeding under the Uniform  
5 Probate Code could be maintained in more than one place in New  
6 Mexico, the court in which the proceeding is first commenced  
7 has the exclusive right to proceed.

8 B. If proceedings concerning the same estate,  
9 protected person [~~ward~~] or trust are commenced in more than one  
10 court of New Mexico, the court in which the proceeding was  
11 first commenced shall continue to hear the matter and the other  
12 courts shall hold the matter in abeyance until the question of  
13 venue is decided [~~and~~]. If the ruling court determines that  
14 venue is properly in another court, it shall transfer the  
15 proceeding to the other court.

16 C. If a court finds that in the interest of justice a  
17 proceeding or a file should be located in another court of New  
18 Mexico, the court making the finding may transfer the  
19 proceeding or file to the other court."

20 Section 22. Section 45-1-305 NMSA 1978 (being Laws 1975,  
21 Chapter 257, Section 1-305, as amended) is amended to read:

22 "45-1-305. RECORDS AND CERTIFIED COPIES.--

23 A. The [~~clerks~~] clerk of the district court and the  
24 clerk of the probate court shall each keep a record for each  
25 decedent, [~~ward~~] protected person or trust involved in any

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1 document [~~which~~] that may be filed with [~~their~~] the clerk's  
2 respective court under the Uniform Probate Code, including  
3 petitions and applications, demands for notices or bonds and  
4 [~~any~~] orders by the respective [~~courts~~] court, and [~~any~~]  
5 responses relating thereto, and shall establish and maintain a  
6 system for indexing, filing or recording [~~which~~] that is  
7 sufficient to enable users of the records to obtain adequate  
8 information. Upon payment of the fees required by law, the  
9 clerk [~~must~~] shall issue certified copies of any probated  
10 wills, letters issued to personal representatives or any other  
11 record or paper filed or recorded. Certificates relating to  
12 probated wills [~~must~~] shall indicate whether the decedent was  
13 domiciled in New Mexico and whether the probate was formal or  
14 informal. Such certificates shall also indicate the names and  
15 addresses of any known heirs. Certificates relating to letters  
16 [~~must~~] shall show the date of appointment.

17 B. If convenient or desirable for any reason, the  
18 presiding district judge for each judicial district shall have  
19 the power, at [~~his~~] the judge's discretion, to order that the  
20 records of informal probate proceedings of a particular county  
21 be kept under the supervision of the probate court or clerk of  
22 the probate court of [~~such~~] that county for such period of time  
23 as the district judge may determine."

24 Section 23. Section 45-1-402 NMSA 1978 (being Laws 1975,  
25 Chapter 257, Section 1-402, as amended) is amended to read:

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1           "45-1-402. NOTICE--WAIVER.--A person, including a  
2 guardian ad litem, conservator or other fiduciary, may waive  
3 notice either by a writing signed by [~~him~~] the person and filed  
4 in the proceeding or by appearance in the proceeding. A person  
5 for whom a guardianship or other protective order is sought [~~a~~  
6 ~~ward~~] or a protected person may not waive notice."

7           Section 24. Section 45-1-403 NMSA 1978 (being Laws 1975,  
8 Chapter 257, Section 1-403) is amended to read:

9           "45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--  
10 NOTICE.--In judicial proceedings involving trusts, or estates  
11 of decedents, minors, protected persons or incapacitated  
12 persons, and in judicially supervised settlements, the  
13 following apply:

14           A. interests to be affected shall be described in  
15 pleadings [~~which~~] that give reasonable information to owners by  
16 name or class, by reference to the instrument creating the  
17 interests or in other appropriate manner;

18           B. persons are bound by orders binding others in the  
19 following cases:

20                   (1) orders binding the sole holder or all co-  
21 holders of a power of revocation or a presently exercisable  
22 general power of appointment, including one in the form of a  
23 power of amendment, bind other persons to the extent their  
24 interests as objects, takers in default or otherwise are  
25 subject to the power;

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1 (2) to the extent there is no conflict of  
2 interest between them or among persons represented:

3 (a) orders binding a conservator bind the  
4 person whose estate [~~he~~] the conservator controls;

5 (b) orders binding a guardian bind the  
6 [~~ward~~] protected person if no conservator of [~~his~~] the  
7 protected person's estate has been appointed;

8 (c) orders binding a trustee bind  
9 beneficiaries of the trust in proceedings to probate a will  
10 establishing or adding to a trust, to review the acts or  
11 accounts of a prior fiduciary and in proceedings involving  
12 creditors or other third parties; and

13 (d) orders binding a personal representative  
14 bind persons interested in the undistributed assets of a  
15 decedent's estate in actions or proceedings by or against the  
16 estate. If there is no conflict of interest and no conservator  
17 or guardian has been appointed, a parent may represent [~~his~~]  
18 the parent's minor child; and

19 (3) an unborn or unascertained person who is not  
20 otherwise represented is bound by an order to the extent [~~his~~]  
21 the unborn or unascertained person's interest is adequately  
22 represented by another party having a substantially identical  
23 interest in the proceeding;

24 C. notice is required as follows:

25 (1) notice as prescribed by Section [~~1-401 of~~

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1 ~~the Probate Code]~~ 45-1-401 NMSA 1978 shall be given to any  
2 person having an interest in the subject of the hearing or to  
3 one who can bind ~~[such]~~ that person as described in Paragraph  
4 (1) or (2) of Subsection B of this section. Notice may be  
5 given both to a person and to another who may bind ~~[him]~~ that  
6 person; and

7 (2) notice is given to unborn or unascertained  
8 persons who are not represented under Paragraph (1) or (2) of  
9 Subsection B of this section by giving notice to all known  
10 persons whose interests in the proceedings are substantially  
11 identical to those of the unborn or unascertained persons; and

12 D. at any point in a proceeding, the district court  
13 shall appoint a guardian ad litem to represent the interest of  
14 a minor; an incapacitated, unborn or unascertained person; or a  
15 person whose identity or address is unknown, if the district  
16 court determines that representation of the interest would  
17 otherwise be inadequate. If not precluded by conflict of  
18 interests, a guardian ad litem may be appointed to represent  
19 several persons or interests. The district court shall set out  
20 its reasons for appointing a guardian ad litem as a part of the  
21 record of the proceeding."

22 Section 25. Section 45-3-203 NMSA 1978 (being Laws 1975,  
23 Chapter 257, Section 3-203) is amended to read:

24 "45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS  
25 PERSONAL REPRESENTATIVE.--

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1           A. Whether the proceedings are formal or informal,  
2 persons who are not disqualified have priority for appointment  
3 in the following order:

4                   (1) the person with priority as determined by a  
5 probated will, including a person nominated by a power  
6 conferred in a will;

7                   (2) the surviving spouse of the decedent who is  
8 a devisee of the decedent;

9                   (3) other devisees of the decedent;

10                  (4) the surviving spouse of the decedent;

11                  (5) other heirs of the decedent; and

12                  (6) on application or petition of an interested  
13 person other than a spouse, devisee or heir, any qualified  
14 person.

15           B. An objection to an appointment [~~can~~] may be made  
16 only in formal proceedings. In case of objection, the  
17 priorities stated in Subsection A of this section apply except  
18 that:

19                   (1) if the estate appears to be more than  
20 adequate to meet exemptions and costs of administration but  
21 inadequate to discharge anticipated unsecured claims, the  
22 court, on petition of creditors, may appoint any qualified  
23 person; and

24                   (2) in case of objection to appointment of a  
25 person other than one whose priority is determined by will by

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1 an heir or devisee appearing to have a substantial interest in  
2 the estate, the court may appoint a person who is acceptable to  
3 heirs and devisees whose interests in the estate appear to be  
4 worth in total more than half of the probable distributable  
5 value of the estate or, in default of this accord, any suitable  
6 person.

7 C. A person entitled to letters under Paragraphs (2)  
8 through (5) of Subsection A of this section or a person who has  
9 not reached [~~his~~] the age of majority and who might be entitled  
10 to letters but for [~~his~~] the person's age may nominate a  
11 qualified person to act as personal representative and thereby  
12 confer [~~his~~] the person's relative priority for appointment on  
13 [~~his~~] the person's nominee. Any person who has reached [~~his~~]  
14 the age of majority may renounce [~~his~~] the right to nominate or  
15 to an appointment by appropriate writing filed with the court.  
16 When two or more persons share a priority, those of them who do  
17 not renounce [~~must~~] shall concur in nominating another to act  
18 for them or in applying for appointment.

19 D. Conservators of the estates of protected persons  
20 or, if there is no conservator, any guardian except a guardian  
21 ad litem of a minor or incapacitated person may exercise the  
22 same right to nominate, to object to another's appointment or  
23 to participate in determining the preference of a majority in  
24 interest of the heirs and devisees that the protected person  
25 [~~or ward~~] would have if qualified for appointment.

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1           E. Appointment of one who does not have highest  
2 priority, including highest priority resulting from  
3 renunciation or nomination determined pursuant to this section,  
4 may be made only in formal proceedings. Before appointing one  
5 without highest priority, the court [~~must~~] shall determine that  
6 those having highest priority, although given notice of the  
7 proceedings, have failed to request appointment or to nominate  
8 another for appointment and that administration is necessary.

9           F. No person is qualified to serve as a personal  
10 representative who is:

11                   (1) under the age of majority;

12                   (2) a person whom the court finds unsuitable in  
13 formal proceedings; or

14                   (3) a creditor of the decedent unless the  
15 appointment is to be made after forty-five days have elapsed  
16 from the death of the decedent.

17           G. A personal representative appointed by a court of  
18 the decedent's domicile has priority over all other persons  
19 except where the decedent's will nominates different persons to  
20 be personal representatives in New Mexico and in the state of  
21 domicile. The domiciliary personal representative may nominate  
22 another, who shall have the same priority as the domiciliary  
23 personal representative.

24           H. This section governs priority for appointment of a  
25 successor personal representative but does not apply to the

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1 selection of a special administrator."

2 Section 26. Section 45-5-101 NMSA 1978 (being Laws 1975,  
3 Chapter 257, Section 5-101, as amended) is amended to read:

4 "45-5-101. DEFINITIONS AND USE OF TERMS.--Unless  
5 otherwise apparent from the context, in Chapter 45, Article 5  
6 NMSA 1978:

7 A. "conservator" is as defined in Section 45-1-201  
8 NMSA 1978;

9 B. "court" means the district court or the children's  
10 or family division of the district court where such  
11 jurisdiction is conferred by the Children's Code;

12 C. "functional impairment" means an impairment that  
13 is measured by a person's inability to manage the person's  
14 personal care or the person's inability to manage the person's  
15 estate or financial affairs or both;

16 D. "guardian" is as defined in Section 45-1-201 NMSA  
17 1978;

18 E. "guardian ad litem" is as defined in Section  
19 45-1-201 NMSA 1978;

20 F. "incapacitated person" means any person who  
21 demonstrates over time either partial or complete functional  
22 impairment by reason of mental illness, mental deficiency,  
23 physical illness or disability, chronic use of drugs, chronic  
24 intoxication or other cause, except minority, to the extent  
25 that the person is unable to manage the person's personal

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1 affairs or the person is unable to manage the person's estate  
2 or financial affairs or both;

3 G. "inability to manage the person's personal care"  
4 means the inability, as evidenced by recent behavior, to meet  
5 one's needs for medical care, nutrition, clothing, shelter,  
6 hygiene or safety so that physical injury, illness or disease  
7 has occurred or is likely to occur in the near future;

8 H. "inability to manage the person's estate or  
9 financial affairs or both" means gross mismanagement, as  
10 evidenced by recent behavior, of one's income and resources or  
11 medical inability to manage one's income and resources that has  
12 led or is likely in the near future to lead to financial  
13 vulnerability;

14 I. "interested person" means any person who has an  
15 interest in the welfare of the person to be protected under  
16 this article;

17 J. "least restrictive form of intervention" means  
18 that the guardianship or conservatorship imposed on the  
19 incapacitated person or minor ~~[ward]~~ protected person  
20 represents only those limitations necessary to provide the  
21 needed care and rehabilitative services and that the  
22 incapacitated person or minor ~~[ward]~~ protected person shall  
23 enjoy the greatest amount of personal freedom and civil  
24 liberties;

25 K. "letters" is as defined in Section 45-1-201 NMSA

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1 1978;

2 L. "limited conservator" means any person who is  
3 qualified to manage the estate and financial affairs of an  
4 incapacitated person pursuant to a court appointment in a  
5 limited conservatorship;

6 M. "limited conservatorship" means that an  
7 incapacitated person is subject to a conservator's exercise of  
8 some but not all of the powers enumerated in Sections  
9 45-5-424 and 45-5-425 NMSA 1978;

10 N. "limited guardian" means any person who is  
11 qualified to manage the care, custody and control of an  
12 incapacitated person pursuant to a court appointment of a  
13 limited guardianship;

14 O. "limited guardianship" means that an incapacitated  
15 person is subject to a guardian's exercise of some but not all  
16 of the powers enumerated in Section 45-5-312 NMSA 1978;

17 P. "minor" is as defined in Section 45-1-201 NMSA  
18 1978;

19 Q. "minor [~~ward~~] protected person" means a minor for  
20 whom a guardian or conservator has been appointed solely  
21 because of minority;

22 R. "protective proceeding" means a conservatorship  
23 proceeding under Section 45-5-401 NMSA 1978;

24 S. "protected person" means a minor or other person  
25 for whom a guardian or conservator has been appointed or other

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1 protective order has been made;

2 T. "qualified health care professional" means a  
3 physician, psychologist, physician assistant, nurse  
4 practitioner or other health care practitioner whose training  
5 and expertise aid in the assessment of functional impairment;  
6 and

7 [~~U. "ward" means a person for whom a guardian has~~  
8 ~~been appointed; and~~

9 ~~V.] U. "visitor" means a person who is an appointee~~

10 of the court who has no personal interest in the proceeding and

11 who has been trained or has the expertise to appropriately

12 evaluate the needs of the person who is allegedly

13 incapacitated. A "visitor" may include, but is not limited to,

14 a psychologist, a social worker, a developmental incapacity

15 professional, a physical and occupational therapist, an

16 educator and a rehabilitation worker."

17 Section 27. Section 45-5-104 NMSA 1978 (being Laws 1975,  
18 Chapter 257, Section 5-104) is amended to read:

19 "45-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN.--A  
20 parent or a guardian of a minor or an incapacitated person, by  
21 an acknowledged power of attorney, may delegate to another  
22 person, for a period not exceeding six months, any of [~~his~~] the  
23 parent's or guardian's powers regarding care, custody or  
24 property of the minor child or [~~ward~~] protected person, except  
25 [~~his~~] the power to consent to marriage or adoption of a minor

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1     ~~[ward]~~ protected person."

2             Section 28. Section 45-5-201 NSMA 1978 (being Laws 1975,  
3 Chapter 257, Section 5-201, as amended) is amended to read:

4             "45-5-201. APPOINTMENT AND STATUS OF GUARDIAN OF MINOR--  
5 GENERAL.--A person becomes a guardian of a minor by parental  
6 appointment or upon appointment by the court. The guardianship  
7 status continues until terminated, without regard to the  
8 location from time to time of the guardian or minor ~~[ward]~~  
9 protected person."

10            Section 29. Section 45-5-209 NMSA 1978 (being Laws 1995,  
11 Chapter 210, Section 54) is amended to read:

12            "45-5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR.--

13            A. A guardian of a minor ~~[ward]~~ protected person has  
14 the powers and responsibilities of a parent regarding the  
15 ~~[ward's]~~ protected person's support, care and education, but a  
16 guardian is not personally liable for the ~~[ward's]~~ protected  
17 person's expenses and is not liable to third persons by reason  
18 of the relationship for acts of the ~~[ward]~~ protected person.

19            B. In particular and without qualifying the  
20 foregoing, a guardian shall:

21            (1) become or remain personally acquainted with  
22 the ~~[ward]~~ protected person and maintain sufficient contact  
23 with the ~~[ward]~~ protected person to know of the ~~[ward's]~~  
24 protected person's capacities, limitations, needs,  
25 opportunities and physical and mental health;

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1 (2) take reasonable care of the [~~ward's~~]  
2 protected person's personal effects and commence protective  
3 proceedings if necessary to protect other property of the  
4 [~~ward~~] protected person;

5 (3) apply any available money of the [~~ward~~]  
6 protected person to the [~~ward's~~] protected person's current  
7 needs for support, care and education;

8 (4) conserve any excess money of the [~~ward~~]  
9 protected person for the [~~ward's~~] protected person's future  
10 needs, but if a conservator has been appointed for the estate  
11 of the [~~ward~~] protected person, the guardian, at least  
12 quarterly, shall pay to the conservator money of the [~~ward~~]  
13 protected person to be conserved for the [~~ward's~~] protected  
14 person's future needs; and

15 (5) report the condition of the [~~ward~~] protected  
16 person and of the [~~ward's~~] protected person's estate that has  
17 been subject to the guardian's possession or control, as  
18 ordered by the court on petition of any person interested in  
19 the [~~ward's~~] protected person's welfare or as required by court  
20 rule.

21 C. A guardian may:

22 (1) receive money payable for the support of the  
23 [~~ward~~] protected person to the [~~ward's~~] protected person's  
24 parent, guardian or custodian under the terms of any statutory  
25 benefit or insurance system or any private contract, devise,

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1 trust, conservatorship or custodianship and money or property  
2 of the [~~ward~~] protected person paid or delivered pursuant to  
3 the provisions of Section 45-5-103 NMSA 1978 or any other  
4 statute;

5 (2) if consistent with the terms of any order by  
6 a court of competent jurisdiction relating to detention or  
7 commitment of the [~~ward~~] protected person, take custody of the  
8 person of the [~~ward~~] protected person and establish the  
9 [~~ward's~~] protected person's place of abode within or without  
10 New Mexico;

11 (3) if no conservator for the estate of the  
12 [~~ward~~] protected person has been appointed, institute  
13 proceedings, including administrative proceedings, or take  
14 other appropriate action to compel the performance by any  
15 person of a duty to support the [~~ward~~] protected person or to  
16 pay sums for the welfare of the [~~ward~~] protected person;

17 (4) consent to medical or other professional  
18 care, treatment or advice for the [~~ward~~] protected person  
19 without liability by reason of the consent for injury to the  
20 [~~ward~~] protected person resulting from the negligence or acts  
21 of third persons unless a parent would have been liable in the  
22 circumstances;

23 (5) consent to the marriage or adoption of the  
24 [~~ward~~] protected person; and

25 (6) if reasonable under all of the

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1 circumstances, delegate to the [~~ward~~] protected person certain  
2 responsibilities for decisions affecting the [~~ward's~~] protected  
3 person's well-being.

4 D. A guardian is entitled to reasonable compensation  
5 for services as guardian and to reimbursement for room, board  
6 and clothing personally provided to the [~~ward~~] protected  
7 person, but only as approved by order of the court. If a  
8 conservator, other than the guardian or one who is affiliated  
9 with the guardian, has been appointed for the estate of the  
10 [~~ward~~] protected person, reasonable compensation and  
11 reimbursement to the guardian may be approved and paid by the  
12 conservator without order of the court controlling the  
13 guardian.

14 E. In the interest of developing self-reliance on the  
15 part of a [~~ward~~] protected person or for other good cause, the  
16 court, at the time of appointment or later, on its own motion  
17 or on appropriate petition or motion of the minor or other  
18 interested person, may limit the powers of a guardian otherwise  
19 conferred by this section and thereby create a limited  
20 guardianship. Any limitation on the statutory power of a  
21 guardian of a minor must be endorsed on the guardian's letters  
22 or, in the case of a guardian by parental appointment, must be  
23 reflected in letters that are issued at the time any limitation  
24 is imposed. Following the same procedure, a limitation may be  
25 removed and appropriate letters issued."

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1 Section 30. Section 45-5-210 NMSA 1978 (being Laws 1975,  
2 Chapter 257, Section 5-210) is amended to read:

3 "45-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN--  
4 GENERAL.--A guardian's authority and responsibility terminate  
5 upon the death, resignation or removal of the guardian or upon  
6 the minor's death, adoption, marriage or attainment of  
7 majority, but termination does not affect [~~his~~] the guardian's  
8 liability for prior acts nor [~~his~~] the guardian's obligation to  
9 account for money and property of [~~his ward~~] the protected  
10 person. Resignation of a guardian does not terminate the  
11 guardianship until it has been approved by the court. A  
12 testamentary appointment under an informally probated will  
13 terminates if the will is later denied probate in a formal  
14 proceeding."

15 Section 31. Section 45-5-211 NMSA 1978 (being Laws 1975,  
16 Chapter 257, Section 5-211) is amended to read:

17 "45-5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT--  
18 VENUE.--

19 A. The court where the [~~ward~~] protected person  
20 resides has concurrent jurisdiction with the court [~~which~~] that  
21 appointed the guardian or in which acceptance of a testamentary  
22 appointment was filed over resignation, removal, accounting and  
23 other proceedings relating to the guardianship.

24 B. If the court located where the [~~ward~~] protected  
25 person resides is not the court in which acceptance of

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1 appointment is filed, the court in which proceedings subsequent  
2 to appointment are commenced shall in all appropriate cases  
3 notify the other court, in New Mexico or another state, and,  
4 after consultation with that court, determine whether to retain  
5 jurisdiction or transfer the proceedings to the other court,  
6 whichever is in the best interests of the [~~ward~~] protected  
7 person. A copy of any order accepting a resignation or  
8 removing a guardian shall be sent to the court in which  
9 acceptance of appointment is filed."

10 Section 32. Section 45-5-212 NMSA 1978 (being Laws 1975,  
11 Chapter 257, Section 5-212, as amended) is amended to read:

12 "45-5-212. RESIGNATION, REMOVAL AND OTHER POST-APPOINTMENT  
13 PROCEEDINGS.--

14 A. Any person interested in the welfare of a [~~ward~~]  
15 protected person, or the [~~ward~~] protected person if fourteen or  
16 more years of age, may petition for removal of a guardian on  
17 the ground that removal would be in the best interest of the  
18 [~~ward~~] protected person. A guardian may petition for  
19 permission to resign. A petition for removal or for permission  
20 to resign may, but need not, include a request for appointment  
21 of a successor guardian.

22 B. Notice of hearing on a petition for an order after  
23 the appointment of a guardian must be given to the [~~ward~~]  
24 protected person, the guardian and any other person as ordered  
25 by the court.

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1 C. After notice pursuant to Section 45-1-401 NMSA  
2 1978 and hearing on a petition for removal or for permission to  
3 resign, the court may terminate the guardianship and make any  
4 further order that may be appropriate.

5 D. If at any time in the proceeding the court finds  
6 that the interest of the [~~ward~~] protected person is or may be  
7 inadequately represented, it may appoint an attorney to  
8 represent the minor, giving consideration to the preference of  
9 the minor if the minor is fourteen or more years of age."

10 Section 33. Section 45-5-303 NMSA 1978 (being Laws 1989,  
11 Chapter 252, Section 5, as amended) is amended to read:

12 "45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN  
13 OF AN INCAPACITATED PERSON.--

14 A. [~~Any~~] An interested person may file a petition for  
15 the appointment of a person to serve as guardian for an alleged  
16 incapacitated person under the Uniform Probate Code. The  
17 petition shall state the following:

18 (1) the name, [~~age~~] date of birth and address of  
19 the alleged incapacitated person for whom the guardian is  
20 sought to be appointed;

21 (2) the nature of the alleged incapacity as it  
22 relates to the functional limitations and physical and mental  
23 condition of the alleged incapacitated person and the reasons  
24 why guardianship is being requested;

25 (3) if a limited guardianship is sought, the

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1 particular limitations requested;

2 (4) whether a guardian has been appointed or is  
3 acting in any state for the alleged incapacitated person;

4 (5) the efforts that have been made that  
5 demonstrate due diligence to locate the other court-appointed  
6 guardian, agent or surrogate designated by the allegedly  
7 incapacitated person;

8 [~~(5)~~] (6) the name and address of the proposed  
9 guardian;

10 (7) the name and address of two persons able to  
11 contact the proposed guardian if address or telephone contact  
12 information of the proposed guardian changes;

13 [~~(6)~~] (8) the names and addresses, as far as  
14 known or as can reasonably be ascertained, of the persons most  
15 closely related by blood or marriage to the alleged  
16 incapacitated person;

17 [~~(7)~~] (9) the name and address of the person or  
18 institution having the care and custody of the alleged  
19 incapacitated person;

20 [~~(8)~~ the names and addresses of any other  
21 incapacitated persons for whom the proposed guardian is acting  
22 if the proposed guardian is an individual;]

23 (10) the number of other protected persons  
24 served by the proposed guardian, the other protected persons'  
25 relationships to the proposed guardian and the types of

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1 guardianship held if the proposed guardian is an individual;

2 [~~(9)~~] (11) the reasons the appointment of a  
3 guardian is sought and the interest of the petitioner in the  
4 appointment;

5 [~~(10)~~] (12) the steps taken to find less  
6 restrictive alternatives to the proposed guardianship; and

7 [~~(11)~~] (13) the qualifications of the proposed  
8 guardian, including whether the guardian has ever been  
9 convicted of a felony.

10 B. Notice of a petition under this section for the  
11 appointment of a guardian and the hearing on the petition shall  
12 be given as provided in Section 45-5-309 NMSA 1978.

13 C. After the filing of a petition, the court shall  
14 set a date for hearing on the issues raised by the petition.  
15 Unless an alleged incapacitated person already has an attorney  
16 of [~~his~~] the alleged incapacitated person's own choice, the  
17 court shall appoint an attorney to represent [~~his~~] the alleged  
18 incapacitated person. The court-appointed attorney in the  
19 proceeding shall have the duties of a guardian ad litem, as set  
20 forth in Section 45-5-303.1 NMSA 1978.

21 D. The person alleged to be incapacitated shall be  
22 examined by a qualified health care professional appointed by  
23 the court who shall submit a report in writing to the court.  
24 The report shall:

25 (1) describe the nature and degree of the

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1 alleged incapacitated person's incapacity, if any, and the  
2 level of the respondent's intellectual, developmental and  
3 social functioning; and

4 (2) contain observations, with supporting data,  
5 regarding the alleged incapacitated person's ability to make  
6 health care decisions and manage the activities of daily  
7 living.

8 E. The court shall [~~also~~] appoint a visitor who shall  
9 interview the person seeking appointment as guardian and the  
10 person alleged to be incapacitated. The visitor shall also  
11 visit the present place of abode of the person alleged to be  
12 incapacitated and the place where it is proposed [~~he~~] the  
13 alleged incapacitated person will be detained or reside if the  
14 requested appointment is made. The visitor shall evaluate the  
15 needs of the person alleged to be incapacitated and shall  
16 submit a written report to the court. The report shall include  
17 a recommendation regarding the appropriateness of the  
18 appointment of the proposed guardian. The report to the court  
19 shall also include recommendations regarding:

20 (1) those aspects of [~~his~~] personal care that  
21 the alleged incapacitated person can manage without supervision  
22 or assistance;

23 (2) those aspects of [~~his~~] personal care that  
24 the alleged incapacitated person could manage with the  
25 supervision or assistance of support services and benefits; and

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1                   (3) those aspects of [~~his~~] personal care that  
2 the alleged incapacitated person is unable to manage without  
3 the supervision of a guardian.

4                   Unless otherwise ordered by the court, the appointment of  
5 the visitor terminates and the visitor is discharged from [~~his~~]  
6 the visitor's duties upon entry of [~~the~~] an order appointing  
7 [~~the~~] a guardian and acceptance of the appointment by the  
8 guardian.

9                   F. A person alleged to be incapacitated shall be  
10 present at the hearing on the issues raised by the petition and  
11 any response to the petition unless the court determines by  
12 evidence that it is not in the alleged incapacitated person's  
13 best interest to be present because of a threat to the health  
14 or safety of the alleged incapacitated person or others as  
15 determined by the court.

16                   G. The court upon request or its own motion may  
17 conduct hearings at the location of the alleged incapacitated  
18 person who is unable to be present in court.

19                   H. The rules of evidence shall apply and no hearsay  
20 evidence that is not otherwise admissible in a court shall be  
21 admitted into evidence except as otherwise provided in this  
22 article. There is a legal presumption of capacity, and the  
23 burden of proof shall be on the petitioner to prove the  
24 allegations set forth in the petition. Such proof shall be  
25 established by clear and convincing evidence.

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1 I. A record of the proceedings shall be made if  
2 requested by the alleged incapacitated person or [~~his~~] the  
3 alleged incapacitated person's attorney or when ordered by the  
4 court. Records, reports and evidence submitted to the court or  
5 recorded by the court shall be confidential, except that the  
6 public shall be granted access to the following information:

- 7 (1) docket entries;  
8 (2) date of the proceeding, appointment and  
9 termination;  
10 (3) duration of the guardianship; and  
11 (4) the name and other information necessary to  
12 identify the alleged incapacitated person.

13 J. Notwithstanding the provisions of Subsection I of  
14 this section, [~~any~~] a disclosure of information shall not  
15 include [~~any~~] diagnostic information, treatment information or  
16 other medical or psychological information.

17 K. The issue of whether a guardian shall be appointed  
18 for the alleged incapacitated person shall be determined by the  
19 court at a closed hearing unless the alleged incapacitated  
20 person requests otherwise.

21 L. Upon request of the petitioner or alleged  
22 incapacitated person, the court shall schedule a jury trial."

23 Section 34. Section 45-5-304 NMSA 1978 (being Laws 1989,  
24 Chapter 252, Section 7, as amended) is amended to read:

25 "45-5-304. FINDINGS--ORDER OF APPOINTMENT.--

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1           A. The court, at the hearing on the petition for  
2 appointment for a guardian [~~under this chapter~~] pursuant to  
3 provisions of Chapter 45, Article 5 NMSA 1978, shall:

4                   (1) inquire into the nature and extent of the  
5 functional limitations of the alleged incapacitated person; and

6                   (2) ascertain [~~his~~] the alleged incapacitated  
7 person's capacity to care for [~~himself~~] the alleged  
8 incapacitated person's own self.

9           B. If it is determined that the alleged incapacitated  
10 person possesses the capacity to care for [~~himself~~] the alleged  
11 incapacitated person's own self, the court shall dismiss the  
12 petition.

13           C. Alternatively, the court may appoint a full  
14 guardian as requested in the petition or a limited guardian and  
15 confer specific powers of guardianship after finding in the  
16 record based on clear and convincing evidence that:

17                   (1) the person for whom a guardian is sought is  
18 totally incapacitated or is incapacitated only in specific  
19 areas as alleged in the petition;

20                   (2) the guardianship is necessary as a means of  
21 providing continuing care, supervision and rehabilitation of  
22 the incapacitated person;

23                   (3) there are no available alternative resources  
24 that are suitable with respect to the alleged incapacitated  
25 person's welfare, safety and rehabilitation;

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1 (4) the guardianship is appropriate as the least  
2 restrictive form of intervention consistent with the  
3 preservation of the civil rights and liberties of the alleged  
4 incapacitated person; and

5 (5) the proposed guardian is both qualified and  
6 suitable, has reviewed the proposed order of appointment and is  
7 willing to serve.

8 D. The court may enter any other appropriate order  
9 consistent with the findings of this section.

10 E. A copy of the order appointing the guardian shall  
11 be furnished to the proposed guardian, the incapacitated person  
12 and ~~[his]~~ the incapacitated person's counsel.

13 F. The order shall contain the name and address of  
14 the guardian as well as notice of the incapacitated person's  
15 right to appeal the guardianship appointment and of ~~[his]~~ the  
16 right to seek alteration or termination of the guardianship at  
17 any time."

18 Section 35. Section 45-5-306 NMSA 1978 (being Laws 1975,  
19 Chapter 257, Section 5-306) is amended to read:

20 "45-5-306. [~~TERMINATION OF GUARDIANSHIP FOR INCAPACITATED~~  
21 ~~PERSON]~~ DEATH OF PROTECTED PERSON OR GUARDIAN--INCAPACITY OF  
22 GUARDIAN.--The authority and responsibility of a guardian for  
23 an incapacitated person terminates upon the death of the  
24 guardian or ~~[ward]~~ protected person, the determination of  
25 incapacity of the guardian or upon removal or resignation as

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1 provided in Section ~~[5-307]~~ 45-5-307 NMSA 1978. Upon the death  
2 of the protected person, the guardian shall submit notice to  
3 the appointing court. Testamentary appointment under an  
4 informally probated will terminates if the will is later denied  
5 probate in a formal proceeding. Termination does not affect  
6 ~~[his]~~ the guardian's liability for prior acts nor ~~[his]~~ the  
7 guardian's obligation to account for funds and assets of ~~[his~~  
8 ~~ward]~~ the guardian's protected person."

9 Section 36. Section 45-5-307 NMSA 1978 (being Laws 1975,  
10 Chapter 257, Section 5-307, as amended) is amended to read:

11 "45-5-307. ~~[DEATH, REMOVAL OR RESIGNATION OF GUARDIAN]~~  
12 SUBSTITUTION, REVIEW AND TERMINATION OF GUARDIANSHIP.--

13 A. On the petition of the incapacitated person or any  
14 person interested in ~~[his]~~ the incapacitated person's welfare  
15 and upon notice and hearing, the court may remove a guardian  
16 and appoint a successor if it is in the best interest of the  
17 incapacitated person.

18 B. Upon death, removal or resignation of a guardian,  
19 the court may appoint another guardian or make any other order  
20 that may be appropriate. If a successor guardian is appointed,  
21 ~~[he]~~ the successor guardian succeeds to the title and powers of  
22 ~~[his]~~ the successor guardian's predecessor.

23 C. The incapacitated person or any person interested  
24 in ~~[his]~~ the incapacitated person's welfare may petition for an  
25 order that ~~[he]~~ the incapacitated person is no longer

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1 incapacitated and for removal or resignation of the guardian.  
2 A request for this order may be made by informal letter to the  
3 court or judge. Any person who knowingly interferes with  
4 transmission of this kind of request to the court may be  
5 adjudged guilty of contempt of court.

6 D. Unless waived by the court upon the filing of a  
7 petition to terminate a guardianship for reasons other than the  
8 death of the incapacitated person, the court shall follow the  
9 same procedures to safeguard the rights of the incapacitated  
10 person as those that apply to a petition for appointment of a  
11 guardian as set forth in Section [~~45-3-303~~] 45-5-303 NMSA 1978.

12 E. In a proceeding that increases the guardian's  
13 authority or reduces the autonomy of the protected person, the  
14 court shall follow the same procedures to safeguard the rights  
15 of the incapacitated person as those that apply to a petition  
16 for appointment of a guardian, as set forth in Section 45-5-303  
17 NMSA 1978.

18 F. Following receipt of a request for review, the  
19 court shall hold a status hearing, which may be informal, to  
20 determine the appropriate order to be entered. If the court  
21 finds the incapacitated person is capable of more autonomy than  
22 at the time of the original order, the court may enter an order  
23 removing the guardian, terminating the guardianship or reducing  
24 the powers previously granted to the guardian. The court has  
25 the option to follow all or part of the procedures that apply

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1 for the appointment of a guardian as set forth in Section  
2 45-5-303 NMSA 1978.

3 G. At any time following the appointment of a  
4 guardian, but not later than ten years after the initial  
5 appointment of a guardian for a protected person and every ten  
6 years thereafter, the court shall hold a status hearing, after  
7 notice to the guardian, the protected person and appropriate  
8 interested persons, to review the status of the protected  
9 person's capacity and the continued need for a guardian. If  
10 the court is unable to contact either the guardian or the  
11 protected person and neither appears for the status hearing,  
12 the court shall appoint a guardian ad litem to investigate and  
13 advise the court as to the status of the protected person and  
14 the guardian.

15 H. Following the status hearing or the court's report  
16 from the guardian ad litem on the status of the protected  
17 person and the guardian as provided in Subsection G of this  
18 section, the court may enter an appropriate order; provided  
19 that, in entering an order that increases the guardian's  
20 authority or reduces the autonomy of the protected person, the  
21 court shall follow the same procedures to safeguard the rights  
22 of the incapacitated person as those that apply to a petition  
23 for appointment of a guardian, as set forth in Section 45-5-303  
24 NMSA 1978."

25 Section 37. Section 45-5-309 NMSA 1978 (being Laws 1975,  
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1 Chapter 257, Section 5-309, as amended) is amended to read:

2 "45-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.--

3 A. In a proceeding for the appointment or removal of  
4 a guardian of an incapacitated person, other than the  
5 appointment of a temporary guardian or temporary suspension of  
6 a guardian, notice of hearing and a copy of the petition and  
7 any interim orders that may have been entered shall be given to  
8 each of the following:

9 (1) the person alleged to be incapacitated;

10 [~~and~~]

11 (2) [~~his~~] the person's spouse, parents and adult  
12 children, or if there are no adult children, at least one of  
13 [~~his~~] the person's closest adult relatives if any can be found;

14 (3) the proposed guardian; and

15 (4) a person, as far as known or as can  
16 reasonably be ascertained, previously nominated or designated  
17 in a writing signed by the incapacitated person prior to  
18 incapacity that has not been revoked by the incapacitated  
19 person or terminated by a court. This includes but is not  
20 limited to writings executed under the Uniform Health-Care  
21 Decisions Act, the Mental Health Care Treatment Decisions Act,  
22 the Uniform Power of Attorney Act, the Uniform Probate Code and  
23 the Uniform Trust Code.

24 Notice of hearing shall be given to [~~any~~] a person who is  
25 serving as the guardian or conservator of the person to be

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1 protected or who has primary responsibility for [~~his~~] the  
2 person's care.

3 B. Notice shall be served personally on the alleged  
4 incapacitated person and [~~his~~] the person's spouse if they can  
5 be found within New Mexico. Notice to an out-of-state spouse,  
6 the parents and to all other persons, except the alleged  
7 incapacitated person, shall be given as provided in Section  
8 45-1-401 NMSA 1978.

9 C. At least fourteen days' notice shall be given  
10 before the hearing takes place. The notice shall be in plain  
11 language and large type and shall include the following  
12 information and shall be substantially in the following form:

13 "NOTICE

14 TO: (name and address of person receiving notice)

15 On (date of hearing) at (time of hearing) in (place of  
16 hearing) at (city), New Mexico, the (name and address of court)  
17 will hold a hearing to determine whether a guardian should be  
18 appointed for (name of alleged incapacitated person). The  
19 purpose of this proceeding is to protect (name of alleged  
20 incapacitated person). A copy of the petition requesting  
21 appointment of a guardian is attached to this notice.

22 At the hearing, the court will determine whether (name of  
23 alleged incapacitated person) is an incapacitated person under  
24 New Mexico law.

25 If the court finds that (name of alleged incapacitated

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1 person) is incapacitated, the court at the hearing shall also  
2 consider whether (name of proposed guardian, if any) should be  
3 appointed as guardian of (name of alleged incapacitated  
4 person). The court may, in its discretion, appoint some other  
5 qualified person as guardian. The court may also, in its  
6 discretion, limit the powers and duties of the guardian to  
7 allow (name of alleged incapacitated person) to retain control  
8 over certain activities.

9 (Name of alleged incapacitated person) shall attend the  
10 hearing and be represented by an attorney. The petition may be  
11 heard and determined in the absence of (name of alleged  
12 incapacitated person) if the court determines that the presence  
13 of (name of alleged incapacitated person) is not possible. If  
14 (name of alleged incapacitated person) attends the hearing and  
15 is not represented by an attorney, the court must appoint an  
16 attorney to represent the alleged incapacitated person.

17 The court may, on its own motion or on request of any  
18 interested person, postpone the hearing to another date and  
19 time.

20 \_\_\_\_\_  
21 (signature of petitioner)"."

22 Section 38. Section 45-5-311 NMSA 1978 (being Laws 1975,  
23 Chapter 257, Section 5-311, as amended) is amended to read:

24 "45-5-311. WHO MAY BE APPOINTED GUARDIAN--PRIORITIES.--

25 A. Any person deemed to be qualified by the court may

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1 be appointed guardian of an incapacitated person, except that  
2 no individual who operates or is an employee of a boarding  
3 home, residential care home, nursing home, group home or other  
4 similar facility in which the incapacitated person resides may  
5 serve as guardian for the incapacitated person, except an  
6 employee may serve in such capacity when related by affinity or  
7 consanguinity.

8 B. Persons who are not disqualified have priority for  
9 appointment as guardian in the following order:

10 (1) a guardian or other like fiduciary appointed  
11 by the appropriate court of any other jurisdiction;

12 (2) ~~any~~ a person, as far as known or as can be  
13 reasonably ascertained, previously nominated or designated in a  
14 writing as defined in Paragraph (4) of Subsection A of Section  
15 45-5-309 NMSA 1978 to serve as guardian or agent in a writing  
16 signed by the incapacitated person prior to ~~his~~ the  
17 incapacitated person's incapacity that has not been revoked by  
18 the incapacitated person or terminated by a court;

19 (3) the spouse of the incapacitated person;

20 (4) an adult child of the incapacitated person;

21 (5) a parent of the incapacitated person,  
22 including a person nominated by will or other writing signed by  
23 a deceased parent;

24 (6) any relative of the incapacitated person  
25 with whom ~~he~~ the incapacitated person has resided for more

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1 than six months prior to the filing of the petition;

2 (7) a person nominated by the person who is  
3 caring for the incapacitated person or paying benefits to [~~him~~]  
4 the incapacitated person; and

5 (8) any other person.

6 C. With respect to persons having equal priority, the  
7 court shall select the person it considers best qualified to  
8 serve as guardian. The court, acting in the best interest of  
9 the incapacitated person and for good cause shown, may pass  
10 over a person having priority and appoint a person having a  
11 lower priority under this section and shall take into  
12 consideration:

13 (1) the preference of the incapacitated person,  
14 giving weight to preferences expressed in writing by the person  
15 while having capacity;

16 (2) the geographic location of the proposed  
17 guardian;

18 (3) the relationship of the proposed guardian to  
19 the incapacitated person;

20 (4) the ability of the proposed guardian to  
21 carry out the powers and duties of the guardianship; and

22 (5) potential financial conflicts of interest  
23 between the incapacitated person and proposed guardian."

24 Section 39. Section 45-5-312 NMSA 1978 (being Laws 1975,  
25 Chapter 257, Section 5-312, as amended) is amended to read:

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1           "45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED  
2           GUARDIAN AND GUARDIAN.--

3           A. If the court enters judgment pursuant to  
4           Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a  
5           limited guardian if it determines that the incapacitated person  
6           is able to manage some but not all aspects of [~~his~~] personal  
7           care. The court shall specify those powers that the limited  
8           guardian shall have and may further restrict each power so as  
9           to permit the incapacitated person to care for [~~himself~~] the  
10          incapacitated person's own self commensurate with [~~his~~] the  
11          incapacitated person's ability to do so. A person for whom a  
12          limited guardian has been appointed retains all legal and civil  
13          rights except those that have been specifically granted to the  
14          limited guardian by the court. The limited guardian shall  
15          exercise [~~his~~] supervisory powers over the incapacitated person  
16          in a manner that is the least restrictive form of intervention  
17          consistent with the order of the court.

18          B. A guardian of an incapacitated person has the same  
19          powers, rights and duties respecting the incapacitated person  
20          that a parent has respecting [~~his~~] an unemancipated minor  
21          child, except that a guardian is not legally obligated to  
22          provide from [~~his~~] the guardian's own funds for the  
23          incapacitated person and is not liable to third persons for  
24          acts of the incapacitated person solely by reason of the  
25          guardianship. In particular and without qualifying the

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1 foregoing, a guardian or [~~his~~] the guardian's replacement has  
2 the following powers and duties, except as modified by order of  
3 the court:

4 (1) to the extent that it is consistent with the  
5 terms of any order by a court of competent jurisdiction  
6 relating to detention or commitment of the incapacitated  
7 person, a guardian is entitled to custody of the incapacitated  
8 person and may establish the incapacitated person's place of  
9 abode within or without New Mexico;

10 (2) if entitled to custody of the incapacitated  
11 person, a guardian shall make provision for the care, comfort  
12 and maintenance of the incapacitated person and, whenever  
13 appropriate, arrange for [~~his~~] training and education. [~~He~~]  
14 The guardian shall take reasonable care of the incapacitated  
15 person's clothing, furniture, vehicles and other personal  
16 effects and commence conservatorship proceedings if other  
17 property of the incapacitated person is in need of protection;

18 (3) if no agent is entitled to make health-care  
19 decisions for the incapacitated person under the provisions of  
20 the Uniform Health-Care Decisions Act, then the guardian shall  
21 make health-care decisions for the incapacitated person in  
22 accordance with the provisions of that act. In exercising  
23 health-care powers, a guardian may consent or withhold consent  
24 that may be necessary to enable the incapacitated person to  
25 receive or refuse medical or other professional care, counsel,

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1 treatment or service. That decision shall be made in  
2 accordance with the values of the incapacitated person, if  
3 known, or the best interests of the incapacitated person if the  
4 values are not known;

5 (4) if no conservator for the estate of the  
6 incapacitated person has been appointed, ~~[the guardian may~~  
7 ~~institute proceedings to compel any person under a duty to~~  
8 ~~support the incapacitated person or to pay sums for the welfare~~  
9 ~~of the incapacitated person]~~ if the court has determined that a  
10 conservatorship is not appropriate or if a guardian appointed  
11 by the court has been granted authority to make financial  
12 decisions on behalf of the protected person in the order of  
13 appointment and in the letters of guardianship pursuant to  
14 Subsection C of Section 45-5-308 NMSA 1978, the guardian has  
15 the following powers and duties, including the power:

16 (a) to institute proceedings to compel any  
17 person under a duty to support the protected person or to pay  
18 sums for the welfare of the protected person to perform that  
19 duty;

20 (b) to receive money and tangible property  
21 deliverable to the protected person and apply the money and  
22 property for support, care and education of the protected  
23 person, but the guardian shall not use funds from the protected  
24 person's estate for room and board that the guardian or the  
25 guardian's spouse, parent or child has furnished the protected

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1 person, unless a charge for the service is approved by order of  
2 the court made upon notice to at least one of the next of kin  
3 of the protected person, if notice is possible;

4 (c) to serve as advocate and decision-maker  
5 for the protected person in any disputes with persons or  
6 organizations, including financial institutions, regarding the  
7 protected person's finances;

8 (d) to obtain information regarding the  
9 protected person's assets and income from persons or  
10 organizations handling the protected person's finances;

11 (e) to file an initial inventory of all  
12 property belonging to the protected person within ninety days  
13 after appointment; and

14 (f) to exercise care to conserve any excess  
15 for the protected person's needs and include in the guardian's  
16 ninety-day and annual reports a description of decisions made  
17 regarding the protected person's finances and property; and

18 (5) the guardian shall exercise [~~his~~] the  
19 guardian's supervisory powers over the incapacitated person in  
20 a manner that is least restrictive of [~~his~~] the incapacitated  
21 person's personal freedom and consistent with the need for  
22 supervision.

23 C. [~~Any~~] A guardian of an incapacitated person for  
24 whom a conservator also has been appointed shall control the  
25 care and custody of the incapacitated person and is entitled to

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1 receive reasonable sums for [~~his~~] services and for room and  
2 board furnished to the incapacitated person. The guardian may  
3 request the conservator to expend the incapacitated person's  
4 estate by payment to third persons or institutions for the  
5 incapacitated person's care and maintenance."

6 Section 40. Section 45-5-313 NMSA 1978 (being Laws 1975,  
7 Chapter 257, Section 5-313) is amended to read:

8 "45-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT--  
9 VENUE.--

10 A. The court where the [~~ward~~] protected person  
11 resides has concurrent jurisdiction with the court [~~which~~] that  
12 appointed the guardian, or in which acceptance of a  
13 testamentary appointment was filed, over resignation, removal,  
14 accounting and other proceedings relating to the guardianship.

15 B. If the court located where the [~~ward~~] protected  
16 person resides is not the court in which acceptance of  
17 appointment is filed, the court in which proceedings subsequent  
18 to appointment are commenced shall in all appropriate cases  
19 notify the other court, in this or another state, and after  
20 consultation with that court determine whether to retain  
21 jurisdiction or transfer the proceedings to the other court,  
22 whichever may be in the best interests of the [~~ward~~] protected  
23 person. A copy of any order accepting a resignation or  
24 removing a guardian shall be sent to the court in which  
25 acceptance of appointment is filed."

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1 Section 41. Section 45-5-314 NMSA 1978 (being Laws 1989,  
2 Chapter 252, Section 14, as amended) is amended to read:

3 "45-5-314. ANNUAL REPORT.--

4 A. The guardian of an incapacitated person shall file  
5 an [~~annual~~] initial report with the appointing court within  
6 [~~thirty~~] ninety days of [~~the anniversary date of~~] the  
7 guardian's appointment. Thereafter, the guardian shall file an  
8 annual report within thirty days of the anniversary date of the  
9 guardian's appointment. A copy of the report shall also be  
10 submitted to the district judge who appointed the guardian or  
11 [~~his~~] the judge's successor, to the incapacitated person and to  
12 [~~his~~] the incapacitated person's conservator, if any. The  
13 court shall review this report. The report shall include  
14 information concerning the progress and condition of the  
15 incapacitated person, including but not limited to [~~his~~] the  
16 incapacitated person's health, medical and dental care,  
17 residence, education, employment and habitation; a report on  
18 the manner in which the guardian carried out [~~his~~] the  
19 guardian's powers and fulfilled [~~his~~] the guardian's duties;  
20 and the guardian's opinion regarding the continued need for  
21 guardianship. If the guardian has been provided power pursuant  
22 to Paragraph (4) of Subsection B of Section 45-5-312 NMSA 1978,  
23 the report shall contain information on financial decisions  
24 made by the guardian. The report shall be substantially in the  
25 following form:

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~~["IN THE DISTRICT COURT~~

~~\_\_\_\_\_ COUNTY, STATE OF NEW MEXICO~~

~~In the matter of the \_\_\_\_\_ )~~

~~No. \_\_\_\_\_~~

~~Guardianship of \_\_\_\_\_ )~~

~~\_\_\_\_\_ )~~

~~(Enter Name of Incapacitated Person))~~

~~An Incapacitated Person. \_\_\_\_\_ )~~

~~GUARDIAN'S REPORT~~

~~Pursuant to Section 45-5-314 NMSA 1978, the undersigned  
duly appointed, qualified and acting guardian of the above-  
mentioned incapacitated person reports to the court as follows:~~

~~1. My name is: \_\_\_\_\_~~

~~2. My address and telephone number are: \_\_\_\_\_~~

~~3. The name, if applicable, and address of the place  
where the incapacitated person now resides are: \_\_\_\_\_~~

~~4. A description of the incapacitated person's place of  
residence and of programs, activities or services in which the  
incapacitated person is involved is as follows: \_\_\_\_\_~~

~~5. The name of the person primarily responsible for the  
care of the incapacitated person at such person's place of  
residence is: \_\_\_\_\_~~

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1           6. ~~The name and address of any hospital or other~~  
2 ~~institution where the incapacitated person is now admitted on a~~  
3 ~~temporary basis are:~~ \_\_\_\_\_

4           7. ~~A brief description of the incapacitated person's~~  
5 ~~physical condition is:~~ \_\_\_\_\_

6           8. ~~A brief description of the incapacitated person's~~  
7 ~~mental condition is:~~ \_\_\_\_\_

8           9. ~~A brief description of contracts made on behalf of the~~  
9 ~~incapacitated person during the past year is:~~ \_\_\_\_\_  
10 \_\_\_\_\_

11          10. ~~A brief description of major decisions made on the~~  
12 ~~incapacitated person's behalf during the past year is:~~ \_\_\_\_\_  
13 \_\_\_\_\_

14          11. ~~The reasons, if any, why the guardianship should~~  
15 ~~continue are:~~ \_\_\_\_\_

16 ~~Signature of Guardian:~~ \_\_\_\_\_

17                   Date: \_\_\_\_\_".]

18           "STATE OF NEW MEXICO  
19           COUNTY OF \_\_\_\_\_

20           \_\_\_\_\_ JUDICIAL DISTRICT COURT

21           IN THE MATTER OF THE GUARDIANSHIP OF \_\_\_\_\_

22 \_\_\_\_\_

23                                   CAUSE NO. \_\_\_\_\_

24           an incapacitated adult

25           GUARDIAN'S 90-DAY \_\_\_\_\_ ANNUAL \_\_\_\_\_ FINAL \_\_\_\_\_ (check one)

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1 REPORT ON THE CONDITION AND WELL-BEING OF AN ADULT PROTECTED PERSON

2 Date of Appointment: \_\_\_\_\_

3 Pursuant to Section 45-5-314 NMSA 1978, the undersigned duly  
4 appointed, qualified and acting guardian of the above-mentioned  
5 protected person reports to the court as follows (attach additional  
6 sheets, if necessary):

7 1. PROTECTED Name \_\_\_\_\_

8 PERSON: Residential Address \_\_\_\_\_

9 Facility Name \_\_\_\_\_

10 City, State, Zip Code \_\_\_\_\_

11 Telephone \_\_\_\_\_ Date of Birth \_\_\_\_\_

12 Name of person primarily responsible at protected person's place  
13 of residence: \_\_\_\_\_.

14 2. GUARDIAN: Name \_\_\_\_\_

15 Business Name (if any) \_\_\_\_\_

16 Address \_\_\_\_\_

17 City, State, Zip Code \_\_\_\_\_

18 Telephone \_\_\_\_\_ Alternate Telephone # \_\_\_\_\_

19 Relation to Protected Person \_\_\_\_\_

20 3. FINAL REPORTS ONLY (otherwise, go to #4)

21 I am filing a Final Report because of: \_\_\_\_\_ My resignation

22 \_\_\_\_\_ Death of the Protected Person \_\_\_\_\_ Court Order

23 \_\_\_\_\_ Other (please explain): \_\_\_\_\_

24 A. If because of resignation, Name of successor, if  
25 appointed: \_\_\_\_\_

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1            Address \_\_\_\_\_

2            City, State, Zip Code \_\_\_\_\_

3            B. If because of Protected Person's death: (attach copy  
4 of death certificate, if available)

5 Date and place of death: \_\_\_\_\_

6 Name of personal representative if appointed: \_\_\_\_\_

7 Address \_\_\_\_\_

8 City, State, Zip Code \_\_\_\_\_

9 4. During the past year or 90 days (if initial report), I have  
10 visited the Protected Person \_\_\_\_\_ times. The date of my last  
11 personal visit was \_\_\_\_\_.

12 5. (A) Describe the residence of the Protected Person:

13            \_\_\_\_\_ Hospital/medical facility \_\_\_\_\_ Protected Person's home

14            \_\_\_\_\_ Guardian's home \_\_\_\_\_ Relative's home (explain below)

15            \_\_\_\_\_ Nursing home \_\_\_\_\_ Boarding/Foster/Group Home \_\_\_\_\_ Other:

16 \_\_\_\_\_

17 (B) During the past year or 90 days (if first report), has  
18 the Protected Person changed his/her residence? \_\_\_\_\_ Do  
19 you anticipate a change of residence for the protected person in  
20 the next year? \_\_\_\_\_

21 6. The name and address of any hospital or other institution  
22 (if any) where the Protected Person is now admitted:

23 \_\_\_\_\_

24 \_\_\_\_\_

25 7. The Protected Person is under a physician's regular care.



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1 Educational activities: \_\_\_\_\_

2 Social Activities: \_\_\_\_\_

3 List Active Friends and/or Relatives: \_\_\_\_\_

4 Occupational activities: \_\_\_\_\_

5 Other: \_\_\_\_\_

6 11. Describe briefly any contracts entered into and major  
7 decisions made on behalf of the Protected Person during the past  
8 year or 90 days (if initial report): \_\_\_\_\_

9 \_\_\_\_\_

10 12. The Protected Person has made the following statements  
11 regarding his/her living arrangements and the guardianship over  
12 him/her: \_\_\_\_\_

13 \_\_\_\_\_

14 13. I believe the Protected Person has unmet needs.

15 \_\_\_\_\_ Yes (explain) \_\_\_\_\_ No

16 \_\_\_\_\_

17 If yes, indicate efforts made to meet these needs: \_\_\_\_\_

18 \_\_\_\_\_

19 14. The Protected Person continues to require the assistance  
20 of a guardian: \_\_\_\_\_ Yes \_\_\_\_\_ No

21 Explain why or why not: \_\_\_\_\_

22 \_\_\_\_\_

23 15. The authority given to me by the Court should:

24 \_\_\_\_\_ remain the same \_\_\_\_\_ be decreased \_\_\_\_\_ be increased

25 Why: \_\_\_\_\_

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\_\_\_\_\_  
16. Additional information concerning the Protected Person or myself (the guardian) that I wish to share with the Court:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. If the court has granted you the authority to make financial decisions on behalf of the Protected Person, then please describe the decisions you have made for the protected person: \_\_\_\_\_  
\_\_\_\_\_.

Signature of Guardian: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_."

B. Any guardian may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in items 7, 8 [~~and 11~~] 9, 14 and 15 of the annual report as specified in Subsection A of this section.

C. The guardian may be fined five dollars (\$5.00) per day for an overdue annual report. The fine shall be used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Uniform Probate Code.

D. The court shall not waive the requirement of an annual report under any circumstance but may grant an extension of time not to exceed sixty days. The court may require the

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1 filing of more than one report annually."

2 Section 42. Section 46A-3-303 NMSA 1978 (being Laws 2003,  
3 Chapter 122, Section 3-303) is amended to read:

4 "46A-3-303. REPRESENTATION BY FIDUCIARIES AND PARENTS.--

5 To the extent there is no conflict of interest between the  
6 representative and the person represented or among those being  
7 represented with respect to a particular question or dispute:

8 A. a conservator may represent and bind the estate  
9 that the conservator controls;

10 B. a guardian may represent and bind the [ward]  
11 protected person if a conservator of the [ward's] protected  
12 person's estate has not been appointed;

13 C. an agent having authority to act with respect to  
14 the particular question or dispute may represent and bind the  
15 principal;

16 D. a trustee may represent and bind the beneficiaries  
17 of the trust;

18 E. a personal representative of a decedent's estate  
19 may represent and bind persons interested in the estate; and

20 F. a parent may represent and bind the parent's minor  
21 or unborn child if a conservator or guardian for the child has  
22 not been appointed."